

# IMMIGRATION: ECONOMIC IMPACT ON AMERICAN WORKERS AND THEIR WAGES

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## FIELD HEARING

BEFORE THE  
SUBCOMMITTEE ON WORKFORCE PROTECTIONS  
OF THE  
COMMITTEE ON EDUCATION  
AND THE WORKFORCE  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED NINTH CONGRESS  
SECOND SESSION

August 14, 2006, in Gainesville, Georgia

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## **IMMIGRATION: ECONOMIC IMPACT ON AMERICAN WORKERS AND THEIR WAGES**

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**Monday, August 14, 2006  
U.S. House of Representatives  
Subcommittee on Workforce Protections  
Committee on Education and the Workforce  
Washington, DC**

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The subcommittee met, pursuant to call, at 11:05 a.m., in the Federal Building, room 201, 121 Spring Street, S.E., Gainesville, Georgia, Hon. Charlie Norwood [chairman of the subcommittee] presiding.

Present: Representatives Norwood, Price, Deal and McCollum.

Staff Present: Loren Sweatt, Professional Staff Member; Steve Forde, Communications Director; Guerino J. Calemine III, Labor Counsel; Rachel Racusen, Press Assistant; and Marsha Renwanz, Legislative Associate/Labor.

Chairman NORWOOD. A quorum being present, the Subcommittee on Workforce Protections will now come to order.

We are meeting today to hear testimony on Immigration: Economic Impact on American Workers and their Wages. Without objection, the record shall remain open for 14 days to allow member statements and other extraneous material referenced during this hearing to be submitted in the official hearing record.

Without objection, Mr. Deal shall be allowed to participate in today's subcommittee hearing.

So ordered.

At this point, I would ask all of you please to turn your cell phones off.

[Laughter.]

Chairman NORWOOD. It is not news to anyone in this room that illegal immigration is the nation's No. 1 domestic policy concern. Of particular importance to this subcommittee is the impact of illegal aliens on the American workforce and the wages of U.S. workers more specifically.

As part of an ongoing series of hearings conducted by the House Education and Workforce Committee, this morning we are here to examine the bottom line issue in much greater depth. Immigration is one issue I have worked on tirelessly throughout my Congressional career, but I got deadly serious after reading of one particular case in rural Georgia.

In late 1990, Miguel Angelo Cordova raped a 3-year old girl in Alma, Georgia, while living there—illegally, I might add. He was

sent to prison to serve a 3-year term. Upon finishing his short sentence, Mr. Cordova was supposed to have been deported. Instead, Cordova was released back onto the streets of Georgia, where he promptly disappeared.

Now you might ask yourself today, how in the world could that happen. I certainly asked that of myself a few years ago, and the more I looked into the story, the more I realized that our nation's immigration laws are broken beyond belief. The fact is this—failed Federal immigration law allowed Mr. Cordova to fall through the cracks of society and Congress must act to make sure that these cracks are filled.

One of the key reasons I supported the House-passed immigration bill to secure our borders and strengthen the hand of law enforcement is because it contains the majority of provisions in the CLEAR Act that I introduced in 2003 that authorizes and funds local law enforcement to go after people like Mr. Cordova.

But I wonder if the other side of the Capitol shares our sentiments. The Senate recently passed legislation that will make our problems far worse. The Reid-Kennedy-McCain-Martinez Bill, otherwise known as S. 2611, fails to account for the likes of Mr. Cordova. Instead, it rewards lawbreakers like him with amnesty, a path to citizenship and a place at the front of the line for higher wages than hard-working Americans. I called today's hearing to shine a spotlight on this matter and expose the Senate legislation's sorry details. After all, the people of Georgia have a right to know what type of stew the Senate Democratic leaders are cooking up with the help of rogue Republicans, and I do not think they are going to like the ingredients at all.

If the Senate Democratic leadership has its way, our government will likely open up a flood of up to 60 million new legal immigrants over the next 20 years. This avalanche of humanity across our borders is not only unsustainable, it threatens the very way of life that American citizens enjoy today. But I do not have to tell the people of Gainesville or Hall County, because the influx of illegal immigration has already turned the city's hospitals, schools and social service networks upside down.

Yet, the Reid-Kennedy-McCain-Martinez legislation goes even further. S. 2611 would create a new guest worker program called the H-2C program. This program will require Davis-Bacon prevailing wage rates to private sector construction, creating a dual paying system. Let us say that again: This program requires Davis-Bacon prevailing wage rates to private sector construction, for the first time, creating a dual paying system.

As any employer in the Federal contracting business already knows, the collection of Davis-Bacon wage data is unreliable. According to the Department of Labor's Inspector General, he says the credibility of wage determinations remains questionable. This is the Department of Labor's Inspector General says, "The credibility of wage determinations remains questionable because of concerns over data on which they are based. Delays in publishing wage decisions calls their relevance into question."

Our witnesses today will discuss the impact of the Senate's immigration proposal on wages. I think we will demonstrate that the House Republicans have a far better plan than the Senate Bill.

First, the Federal Government must secure the border and immediately stop the flood of illegal immigration. The current 6000 National Guard troops cannot do it, it will take 36,000 to 48,000. And until we sustain that size deployment, we will continue to fail on the border.

Second, the Federal Government must make certain that the likes of Miguel Angelo Cordova serves their time and are then deported from this nation. The only way to accomplish this is to strengthen existing interior enforcement law and actually enforce the rules. The CLEAR Act provisions in the House Bill will do just that.

When these critical demands are met and Congress is fully satisfied that the borders are secure, then and only then we can implement perhaps a guest worker program that actually works. Then and only then, after the border is secure. I want to underscore this last point and make perfectly clear that crafting a guest worker program that works is absolutely critical. I understand personally and know the value of foreign labor. Certain sectors of the American economy would struggle without it under current labor conditions. However, it would be more than foolish to support the legislative solutions offered up in the Senate Bill 2611. The combination of amnesty, dramatic expansion of Davis-Bacon prevailing wage rates and burdensome paperwork on small businesses is sending a toxic mix that will not work.

At this point, I would like to welcome Congresswoman McCollum, who has come certainly the furthest of any of us in this room to join us in this hearing. Ms. McCollum is a member of our Subcommittee and Committee, and we would like to welcome you to Georgia and now you are recognized for 5 minutes.

[The prepared statement of Mr. Norwood follows:]

**Prepared Statement of Hon. Charlie Norwood, Chairman, Subcommittee on Workforce Protections, Committee on Education and the Workforce**

It's not news to anyone in this room that illegal immigration is the nation's number one domestic policy concern. Of particular importance to this subcommittee is the impact of illegal aliens on the American workforce—and the wages of U.S. workers more specifically.

As part of an ongoing series of hearings conducted by the House Education & the Workforce Committee, this morning we're here to examine this bottom line issue in much greater depth.

Immigration is one issue I have worked on tirelessly throughout my Congressional career. But I got deadly serious after reading about one particular case in rural GA.

In the late 1990s, Miguel Angelo Gordoba raped a three year old girl in Alma, Georgia while living here illegally. He was sent to prison to serve a three year term. Upon finishing his very short sentence, Mr. Gordoba was supposed to be deported.

Instead, Gordoba was released back onto the streets of Georgia where he promptly disappeared. You might ask yourself, "How could that happen?" I certainly did, and the more I looked into the story the more I realized that our nation's immigration laws are broken beyond belief.

The fact is this: failed federal immigration law allowed Mr. Gordoba to fall through the cracks of society, and Congress must act to make sure those cracks are filled.

One of the key reasons I support the House-passed immigration bill to secure our borders and strengthen the hand of law enforcement is because it contains the majority of provisions in the CLEAR Act that I introduced in 2003 that authorizes and funds local law enforcement to go after scum like Gordoba.

But I wonder if the other side of the Capitol shares our sentiments. The Senate recently passed legislation that will make the problems we face worse.

The Reid-Kennedy bill, otherwise known as S. 2611, fails to account for the likes of Mr. Gordoba. Instead, it rewards lawbreakers like him with amnesty, a path to

citizenship, and a place at the front of the line for higher wages than hard-working Americans earn.

I called today's hearing to shine a spotlight on this matter and expose the Senate legislation's sordid details. After all, the people of Georgia have a right to know what type of stew the Senate Democrat leaders are cooking up, and I don't think they are going to like the ingredients.

If the Senate Democrat leadership has its way, our government will likely open up a flood of up to 60 million new legal immigrants over the next 20 years. This avalanche of humanity across our borders is not only unsustainable; it threatens the very way of life American citizens now enjoy.

But I don't have to tell the people of Gainesville, because the influx of illegal immigration has already turned the city's hospitals, schools and social service networks upside down.

Yet the Reid-Kennedy legislation goes even further. S. 2611 would create a new guest worker program called the H-2C program.

This program would require Davis-Bacon prevailing wage rates to private sector construction, creating a dual paying system.

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First, the federal government must secure the border and immediately stop the flood of illegal immigration. The current 6,000 National Guard troops can't do it. It will take 36,000 -48,000, and until we sustain that size deployment we will continue to fail.

Second, the federal government must make certain that the likes of Miguel Angelo Gordoba serve their time and are deported.

The only way to accomplish this is to strengthen existing interior enforcement law and actually enforce the rules. The CLEAR ACT provisions in the House bill do just that.

When these critical demands are met, and Congress is fully satisfied that the borders are secure, then we can implement a guest worker program that works. Then and only then.

I want to underscore this last point and make perfectly clear that crafting a guest-worker program that works is critical. I know the value of foreign labor. Certain sectors of the American economy would struggle without it under current labor conditions.

However, it would be more than foolish to support the legislative solutions offered up in S. 2611. A combination of amnesty, dramatic expansion of Davis-Bacon prevailing wage rates and burdensome paperwork burdens on small business is simply a toxic mix that will not work.

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Ms. MCCOLLUM OF MINNESOTA. Thank you, Mr. Chairman. It is a pleasure to be here in Georgia.

A recent newspaper quoted the distinguished Republican Senator from Nebraska, Senator Hagel, calling these House Republican hearings on immigration complete folly. Well, Mr. Chairman, unlike Georgia, we have long, cold snowy winters in Minnesota and so, it is beautiful right now in Minnesota. And I would not miss a day in August back home in Minnesota to attend a hearing that was a complete folly. I believe that this hearing can add much in setting the record straight on immigration reform.

In Minnesota, we also do not have a Democrat Party, I am a member of the Democratic Farmer Labor Party, DFL. We believe hard in representing America's working families and that includes family farmers and laborers. They are the heart and soul of America, and I fight for working people every day to make this country strong and prosper.



I say this because today we are here to talk about the future of America and our families and the immigration crisis facing our nation. These issues are not folly or frivolous, they are important. Immigration is a serious issue; it is an issue that is deadlocked when Republicans fight with Republicans. Imagine, Republicans control the White House, the U.S. Senate and the U.S. House, monopoly in power, yet they refuse to fix a broken system—our nation's borders.

The American people—my constituents in Minnesota and folks here in Georgia—we know that our country's borders are broken. Six years into the Bush Administration, 5 years after the 9/11 terrorist attack, our borders are still broken. Homeland security is the top priority for Democrats and Republicans. Homeland security is not a partisan issue, it is an issue all Americans take seriously.

Our nation's airlines are currently on an elevated level because of terrorist threats. I had to hand my Chapstick over the other day at the airport because of the security that had to be put in place because of these terrorist threats. Yet, while we turn over our toothpaste and shampoo at the airport to protect our homeland security, as many as 5.3 million people have entered our country illegally over the past 10 years. Yes, most of these people are good people, they are very poor people looking for a better life in this land of opportunity, which we are all so blessed to live in. But criminals, terrorists and drug traffickers also enter this country, and they are likely still entering today.

The American people want border security and immigration reform, and the laws of this land enforced and the dollars provided to our enforcement community so that they can carry out their job. And the American people are watching to see if the Republicans in Congress can stop fighting with each other long enough to pass an immigration bill before they leave Washington and go home to fight to save their own jobs in this November's election.

I would like to remind my Republican colleagues here today that in May, the U.S. Senate passed the bill Senate 2611, the Specter-Brownback-Hagel-Martinez-McCain Immigration Reform Act. Now those names might sound like the lineup for the 2008 Republican primary, but this point needs to be made—this is a Republican Bill, this is a Senate Bill that was written by the Republicans, passed by Republicans with the blessing and support of President Bush. My Republican colleagues here today can attack President Bush's position on immigration and the Senate Republicans, but I will not.

We need a common sense immigration policy that will secure our borders and strengthen our economy, and protect American workers and their wages, allow American farmers and small business owners to find the workers that they do not have available to them. But we must make sure every American worker is offered the job first and foremost. Employers do need to be able to react to labor shortages. In these cases when there is a labor shortage, temporary guest workers—not indentured servants or disposable workers—but guest workers, who are legally hired by business and farms because there are not enough American workers to fill the positions, could be a reasonable solution. In that event, we must make sure that the wages and working conditions of guest workers do not undercut the wages and working conditions of America's workers.

I was interested to learn that Georgia State Senator Saxby Chambliss has offered an immigration bill, S. 2087. It is called the Cultural Employment and Workforce Protection Act. And according to our non-partisan Congressional Research Service, it would expand the current guest worker visa program and would have guest workers' employers pay the higher of the prevailing wage or the state's minimum wage. Clearly, Senator Chambliss recognizes there's a need here in Georgia for guest workers. And I will be interested in learning if my colleagues here in the House feel the same way about guest workers and the prevailing wage.

To keep America's economy and businesses strong, America needs workers. And I know that there are many locally here in the poultry industry and the carpet mills that are large employers and important corporate citizens. And they have a significant demand for workers. America needs to keep good jobs at good wages with good benefits to keep our families and our nation strong. Unfortunately, for far too long, this Congress has been more interested in exporting American jobs rather than fighting for America's workers. Honest, hard-working Americans deserve to have their wages, benefits and workplace safety protected by the laws Congress has already passed. But in reality, the enforcement of labor and immigration laws has been ignored by the Bush Administration and working families suffer as a result. And I will have more to submit in the record on that fact. This Republican Congress, all too often, is complicit in abandoning America's workers by refusing to hold the White House accountable for this negligence.

Now that immigration reform is being addressed, I want a common sense plan, but I also want assurances that a guest worker program will not displace American workers and undermine wage or living standards in our American families. I am committed to work for a plan and immigration bill that protects our borders and protects wages and living standards for America's workers. And as we move forward with a comprehensive solution this year or next year—if this Republican Congress fails to act now, it will be next year—I am willing to work with both Democrats and Republicans, with organized labor, with agriculture, with service industries and with the business community to ensure that all our businesses are growing and our national economy stays strong, and American workers have good jobs at good wages.

And Mr. Chairman, I thank you for the courtesies you have extended me.

Chairman NORWOOD. Thank you, Ms. McCollum, and thank you for coming so far to join us in this hearing.

I think it is probably appropriate for the sake of the record that we point out that Senator Chambliss and Senator Isakson voted a loud hard no on the Senate immigration bill.

And with that, I would like to yield to not only a very good friend, but a very valued member of this Subcommittee, Dr. Tom Price.

Dr. PRICE. Thank you, Mr. Chairman. I want to thank you for your leadership on this issue and for calling this field hearing. I also want to thank Representative McCollum for coming to the great state of Georgia and for her perspective on the validity of this hearing. I would, however, respectfully remind her that dema-

goguery of this issue or any other issue does a great disservice to all of us and does not get us any closer to a solution. This is not a Republican problem or a Democrat problem, it is an American problem, it is an American challenge, and we do best when we attempt to solve these kinds of issues together.

I thank each and every one of you for coming as well to witness this. Your presence demonstrates clearly the importance of this matter and that this hearing matters.

I would like to focus in my opening statement on the issue at hand, which is the issue of illegal immigration and its economic impact on American workers and their wages.

The economy of every nation is greatly affected by human capital which has seen wholesale changes over the past 25 years in the United States. The domestic supply of labor has been inundated by illegal aliens, fueled primarily by an influx of cheap, low-skilled labor from south of the border, who make up 40 percent of foreign laborers. And while legal immigration—legal immigration—in a structured and limited manner makes a positive contribution to the national economy, it is rampant illegal immigration that poses a threat to our stability and our economic well-being. It is also no surprise that these low-skilled workers are disproportionately impacting the economy in certain sectors.

A recent study by the Congressional Budget Office, the CBO, touches upon such a conclusion by stating “The arrival of large numbers of immigrants with little education probably slows the growth of wages of native-born high school dropouts at least initially, but the ultimate impact on wages is difficult to quantify.” The study goes on to conclude that “Growth in the foreign-born workforce on the average earnings of native high school dropouts have ranged from negligible to an earnings reduction of 10 percent.”

And while it is encouraging that an official government study formally recognizes the impact foreign workers have on the native-born population, it is my belief that the conclusions grossly underestimate the true impact of these workers and the overall scope of the problem. If there is a silver lining, then it is the formal confirmation that the supply of low-skilled foreign workers is depressing the wages of American workers. Therefore, this evidence of depressed wages proves an oversupply of cheap labor exists in this country, not a shortage, as many would have us believe.

Beyond the economics and analysis are the experiences of the citizens of the state of Georgia. Illegal sources of labor are forcing our law-abiding citizens out of their livelihoods and today’s hearing will shed greater light on the scope of that problem.

But all of this begs the question, how did we get to this point. The United States is witnessing a tidal wave of inexpensive, low-skilled labor. The lack of willpower demonstrated by multiple administrations is troubling. And as a Member of Congress, I expect our laws to be enforced to the letter. My constituents expect no less.

The numbers compiled by the current administration’s own Department of Homeland Security point to a collapse in the enforcement of authorized employee hiring. From 1997 to 2004, the number of arrests due to employer investigations by immigration au-

thorities plummeted from 17,554 to 159—a 99 percent drop. And while recent news of increased workplace raids and arrests are interesting, these figures paint the picture of an administration that is disengaged from their responsibilities. Of course, this in no way excuses the employers who engage in illegal business practices by using unauthorized workers.

As proof that businesses could be doing more, only 2300 of the nation's 5.6 million employers used the Basic Pilot Employment Verification Program to check Social Security numbers and the legality of their new hires in 2004. The most current figure indicates that just 10,000 employers are using the Basic Pilot Program to verify. And without a more sweeping check of new hires in this country, the economic incentive that brings illegal aliens here will continue to exist.

This is what the facts have demonstrated. There is an oversupply of inexpensive foreign labor depressing domestic wages, ample first-hand evidence of Georgians losing their jobs to illegal aliens, a history of administrations neglecting their responsibilities and certain business quarters flaunt the law by hiring illegal workers.

This crisis will be made worse if Congress adopts the U.S. Senate version of immigration reform. Under the Senate plan, illegal aliens will become guest workers, gain a clear path to automatic citizenship and be guaranteed wages greater than that Americans receive for the same work. The Senate bill is a formula to exacerbate the situation, further depressing domestic wages.

Stemming the flow of illegal immigration starts with certain strategies, but particularly vigorous interior enforcement and compliance from the business community to engage in employee verification—not the blanket open-door policy the Senate proposes.

By undertaking the U.S. House of Representatives' approach to immigration reform, the Federal Government can buttress wages, protect the domestic workforce and keep American jobs for Americans. Without a more complete effort, the United States will continue to see wholesale changes to the labor pool with negative consequences for multiple sectors of the economy.

Again, I want to thank the Chairman for holding this hearing, and I want to thank the panel members who are here to provide their testimony and I look forward to that testimony.

Thank you, Mr. Chairman.

Chairman NORWOOD. Thank you very much, Dr. Price.

And last, and happily we welcome not a member of our Committee, but a valued member of the House of Representative, Chairman Nathan Deal and we appreciate you allowing us to have this hearing in your district. Mr. Chairman, you are up.

Mr. DEAL. Well, thank you, Chairman Norwood. I appreciate the fact that you and Ms. McCollum and Dr. Price would come here today for this hearing. I think this is an appropriate setting. I want to thank the staff of this Federal courthouse facility for allowing us to be here. And I really want to thank you for allowing me to see this courtroom from this perspective. As many of my friends in the audience know, I practiced law in this community for about 23 years, and I always saw it from where the witnesses are right down there. It is a totally different view, I might add.

[Laughter.]

Mr. DEAL. As you know, as Chairman of the Health Subcommittee of Energy and Commerce, we have also had and will have tomorrow another field hearing as it relates to the jurisdictional area of healthcare. We started out with a hearing last week in Nashville, Tennessee and tomorrow morning in Dalton, Georgia, we will have another hearing, beginning at 10 in the Trade Center. And we, of course, will have—Dr. Norwood, I know will be there as a part of that panel. It will be another look at an aspect of illegal immigration that in my community and in my district, and I am sure in many of yours, there are three big categories that we hear first of all, as the impact.

One is in the healthcare arena. The cost of those who show up at emergency rooms with no insurance and the burden then being shifted, not only to the local jurisdiction and the hospital, but to those who have private insurance because the uncompensated indigent care component does drive up the cost of healthcare. We have looked at that and will continue to look at that in our hearing.

The other area is that of education. We have alluded to it, and of course, I think all of us recognize that heavily impacted areas require that new schools be built. The burden of children who speak no English coming into the traditional classroom setting has put a tremendous burden on many school systems and the school systems in the area where we currently are sitting are fine examples of that.

The third area is that of criminal conduct. To hear some of my local law enforcement officers say that the No. 1 criminal concern they have is Hispanic gang activity is certainly a shocking issue. And that was confirmed this last weekend, the newspaper reported that a major criminal activity, a gang, has now been sentenced in the Federal court of the Northern District of Georgia, which this court is a part of that Federal court system of Georgia. A major crime activity being disrupted by virtue of those convictions.

But the other aspect, which is the context of the hearing today, is that of what impact does illegal immigration have on the overall labor market. And there are, of course, disputed claims there. And I hope that this hearing today will give an insight into those impacts and what, if anything, we should be concerned about as we try to finalize legislation, hopefully before the end of this year.

I want to thank you, I want to thank the witnesses for their time and their energy in coming and being with us, and I look forward to their testimony.

Thank you for allowing me to participate.

Chairman NORWOOD. Thank you very much, Mr. Chairman.

We have a very distinguished panel of witnesses today, and we are all very grateful, gentlemen, for your time and your energy to come and help us try to determine what Congress should do about this subject. We are all very eager to hear your testimony.

I will begin by introducing a panel member and then you will be allowed 5 minutes. I will not be very strict on that 5 minutes, but I have read your testimony and most of it is much longer than 5 minutes, so try to summarize just a little bit. If I had you in Washington, I would have some lights out in front of you that would show when it is time to stop. And it is very hard for me to bother

people when they are testifying, so do the best you can to stay within five or so minutes.

Senator Chip Pearson of Dawsonville is first. He is serving his first term as Senator for the 51st District. He is the Secretary of the Transportation Committee as well as a member of the Agriculture and Consumer Affairs, Regulated Industries and Utilities and Appropriations Committee.

Maybe even more important, Chip Pearson is the founder and president and CEO of Pecos, Inc., the Paramount Grading Company, a small business here in Georgia that what we do in Washington is going to so desperately affect.

With that, I yield time to Senator Pearson.

**STATEMENT OF HON. CHIP PEARSON,  
GEORGIA STATE SENATOR**

Mr. PEARSON. Thank you, Mr. Chairman and members of the Committee. I appreciate the opportunity to be here today. I will be speaking, by the way, as an employer and as a contractor, not necessarily as a Senator.

Chairman NORWOOD. Senator, you need to pass that mic down, please.

Mr. PEARSON. Can you hear me better?

Chairman NORWOOD. Much better.

Mr. PEARSON. All right. Thank you again for the opportunity, Mr. Chairman, to be here, and members of the Committee. I will be primarily speaking as an employer and a contractor. I would add though, for the record, I was just named this summer as Chairman of the Economic Development Committee. So also on that standpoint, we are here.

Let me just say, and I am going to try and be brief, you have seen our testimony, and I will try to paraphrase most of it. But let me preface my feelings as an employer and as an American citizen—this was not in the testimony as we could not get the copy-right permission secured before we had to submit it—but in the Engineering News Record editorial of June 26, 2006, as well as the April 17, the situation of immigration in construction was brought up. "Immigration reform starts and finishes with the rule of law," was the title of that text. I will return to that later for my concluding remarks, but to let you feel where we feel as a company, as well as a citizen, that we should be dealing with this situation is right there, what you have said before, is the rule of law.

As I said, I am going to try to paraphrase what we have submitted, in the instance of time here.

We started out by saying the following are our views and points of interest as well as concerns concerning the Senate Bill 2611 and how they affect our companies. Our philosophies are for an open workplace that affords all an opportunity to prosper if they are qualified and can meet the terms and conditions of employment. Part of those conditions involve the ability to comply with the I-9 guidelines as well as verification of Social Security information via the Veri-Check procedure.

We then continued on the bottom of page one and the rest of page two to go step by step through our policy, which has been drafted by our legal counsel and is what is required as of the law

today. If you notice, the bottom of page one and really all of page two deals with the most exasperating part of the whole process, which is when there is a no-match letter sent to us from Social Security.

What happens is after this letter is sent and we go through a five-step procedure of what the employee's responsibility as well as ours is, is that it takes a minimum of 67 working days to get through this five-step process, and the result is that at the end of that period, if the employee has not been able to accomplish the requirements of those I-9 or Social Security laws, then it leads to termination. That is 67 days that we have to deal with one situation, in which case many times the employee is unsure of his status, we are unsure of his status on a crew.

And as it goes to our comments and observations:

Item one, the current method of verifying employment eligibility does not work—plain and simple, it does not work. Utilizing Veri-Check only verifies the numbers or the documents exist. It does not verify that they belong to a particular individual. And there is the crux of the problem for us as an employer.

Second, as relating to the language in the Bill, how is a Blue Card going to be a solution? Any document can be reproduced, such as a Social Security card, Alien Registration Receipt, driver's license. So why do we expect this Blue Card to be a solution to a problem that has the same basic underlying concerns?

Third, all employers should be held to the same standards or be penalized for hiring illegal immigrants. The bottom line is this, there are many construction companies out there of different sizes in the state and across the country. We are one of many, but not of the majority, that try to abide by the laws. But when the laws are too cumbersome to abide by, there is no help from the Federal Government in making sure that you are in compliance with them as well as the differentiation in the wages that often occurs. The situation comes where we are often bidding against another firm that is not going by the laws, and therefore, they are at a huge advantage.

Fourthly, is rewarding illegal behavior the answer? Is allowing illegal workers the opportunity to collect benefits, welfare, unemployment, Social Security, in-state tuition or higher education benefits? As we dealt with in 529 this year in the Senate, we brought up many of those issues and those are real concerns to the people in Georgia as well as to the employment and construction community.

Fifthly, a guest worker program may be a positive endeavor, as long as it is not implemented by providing amnesty for current illegal workers within the United States. Again, returning to that reform starts and finishes with the rule of law concept.

No. 7, is allowing amnesty under Immigration Accountability Act of 2006, providing for permanent residency for qualifying illegal aliens and their spouses as well as children the answer?

Item No. 8, the Bill proposes that English is the language of the United States with no specifics. However, the Supreme Court Interpreters Grant Awards Act would provide state court grants to assist individuals with limited English proficiency to access and un-

derstand court proceedings and allocates funds for a related court interpreter.

No. 9, the Bill would add additional cost to ensure compliance along the lines of necessary legal counsel as well as perpetual monitoring.

And finally under ten, which is of concern to us as a construction industry, and you as well, Mr. Chairman, under 2611, Davis-Bacon wage rates will be applied to foreign temporary workers in all construction occupations, even if the project receives no Federal funds and does not otherwise fall under the Davis-Bacon Act. Why do we want to reward temporary workers with the opportunity to earn more for the same job performed by American workers?

In the prepared remarks, we put in a closing that we believe that the current law in effect should be strictly enforced and the borders secured within parameters already established. Internal I-9 audits, processing potential candidates for employment under Federal requirements, and responding to no-match letters as described above is very costly, inefficient to us, as well as other employers who want to comply with the law in this country. Those attempts are aggravated due to a lack of enforcement of the laws already in place.

With that, I am going to conclude by reading the last sentence of one of the editorials that I referred to earlier. And again, if we get the copyright permission, we will forward these for the record. This is the last sentence of this: "Any nation that does not preserve the rule of law is doomed, it is the rock upon which all economic development and social progress is based. This is the starting and finishing point for illegal immigration policy."

And with that, Mr. Chairman, that concludes my prepared remarks. I will be glad to answer questions, if there are any.

[The prepared statement of Mr. Pearson follows:]

#### **Prepared Statement of Hon. Chip Pearson, Georgia State Senator**

##### *Senate Bill 2611*

To follow are my views and points of interest as well as concerns pertaining to Senate Bill 2611 and how they affect my company. Paramount's philosophy is to offer an open work place that affords all an opportunity to prosper if they are qualified and can meet the terms and conditions of employment. Part of those conditions involve the ability to comply with I-9 guidelines as well as verification of Social Security Information via Veri-Check.

The procedure we utilize is policy in order to comply with Federal Laws.

1. Request a document that establishes both identity and employment eligibility or,
2. Request 1 document that establishes identity and 1 document that establishes employment eligibility.
3. Employment is offered after completion of the I-9 and all other employment requirements are met.
4. Veri-Check is then utilized to insure document credibility.

This brings about concerns with the current system and proposals under Senate Bill 2611. If Veri-Check indicates a no match, then we must then follow guidelines giving the employee and opportunity to correct the error.

##### *No-Match Policy*

When employed by Paramount Grading Corp. (PGC) a number of documents are required, by law or regulation, to be completed and transmitted to various governmental agencies. For example, the Social Security number is used as a key identifier to report employment, earnings and taxes to the Internal Revenue Service, the Georgia Department of Revenue, the Social Security Administration and other federal and state governmental agencies. In addition, other documents establish the



employee's authorization to work in the United States. Both the Department of Homeland Security and the Social Security Administration have begun to issue no-match letters when the information we provide from these documents is not consistent with their records. The no-match letters request PGC's and the employee's prompt resolution and correction of these inconsistencies.

This policy sets forth the minimum procedural requirements for the correction of a no-match issue communicated to PGC by an outside governmental agency. These minimum procedural requirements are established to provide consistency in the system wide application of this correctional process.

No matches can be caused by many legitimate reasons, so it should not be assumed that when a governmental agency reports a no-match that an employee has intentionally done anything wrong. PGC will notify an employee, through the Human Resource Department, of all no-match issues. It is ultimately the employee's responsibility to follow-up with the proper governmental agency to correct the problem or to provide alternative documentation establishing the employee's identity and authorization to work.

The Human Resource Department may not provide legal advice should it be needed by the employee to correct the no-match issue.

#### *No-Match Notification Process*

Over the course of the year PGC is required to provide a number of outside governmental agencies and employee's with employee information. The Internal Revenue Service (IRS), the Department of Homeland Security (DHS) and the Social Security Administration (SSA) are examples of some of the outside governmental offices which PGC may be required to provide information too. Periodically, these outside governmental agencies communicate to PGC that a discrepancy exists when an employee's record is compared to the outside governmental agency's record. The outside agency transmits a report to PGC when such a no-match occurs.

#### *Corrective Process*

(A) Step One: Within 14 days of receipt of a no-match letter, PGC will check its records to determine whether the discrepancy results from a clerical error in the employer's records or in its communication to the SSA or DHS. If there is such an error, PGC will correct its records, inform the relevant agencies and verify that the name and number, as corrected, match agency records. If there is no error, PGC will forward the names of employees and no match information to the Vice President of Human Resources or other designee.

(B) Step Two: When the Vice President of Human Resources or designee receives no-match information he/she will send a letter to the employee. Due to the confidential nature of the no-match process, any and all correspondence should be sent via certified mail to the employee's home address. This letter shall be transmitted to the employee within the 14 day time period from receipt of the no-match letter from the agency. The letter will explain the nature of the no-match and direct the employee to contact the relevant agency and take action to correct the error.

(C) Step Three: The employee shall be advised in the letter that he/she shall have the option of providing PGC with alternative documentation establishing the employee's identification or work authorization and that he/she must provide the appropriate documentation within 63 days of the employer's receipt of the no-match letter. Please note that no document containing the same information that is in question by the agency and no receipt for an application for a replacement document shall be used to establish employment authorization, identity or both. No document without a photograph may be used to establish identity or both identity and employment authorization.

(D) Step Four: Following a 30 day period after the letter in steps Two and Three, above, has been sent to the employee, if it is subsequently learned through the no-match process that an individual previously notified has not attempted to correct an identified problem, a final letter will be sent to the employee. This letter will strongly advise the employee of the seriousness of the problem and the necessity for immediate corrective action. The letter will state that it represents the final notice to the employee of the no-match problem. PGC will provide the employee 63 days from the date of PGC's receipt of the no-match letter to either provide evidence that the no-match issue has been corrected or to provide alternative documentation of the employee's identity and authorization to work as outlined in Steps Two and Three above. If the employee fails to accomplish either alternative within the 63 day period, the employee will be terminated.

(E) Step Five: If the employee provides PGC with alternative documentation of the employee's identity and authorization to work as outlined in Steps Two and Three above, PGC shall record the information on a new I-9 form and staple the

new form to the old I-9 form. PGC shall retain the new I-9 form for the same period as if the employee were newly hired at the time the new I-9 form is completed.

As you can see, this is a costly and enduring time period created by the legalities of complying with the current system and the potentials of Senate Bill 2611.

*Observations and Comments*

1. The current method to verify employment eligibility does not work. Utilizing Veri-Check only verifies the numbers or documents exist. It does not verify they belong to that particular individual.

2. How will the Blue Card be a solution? Any document can be reproduced such as a Social Security Card, Alien Registration Receipt Card, Driver's License, etc. Why would the Blue Card be an exception?

3. All employers should be held to the same standards or be penalized for hiring illegal immigrants.

4. Is rewarding illegal behavior the answer? Is allowing illegal workers the opportunity to collect Social Security Benefits, Welfare, Unemployment, In-State tuition or higher education benefits the answer?

5. The Guest Worker Program may be a positive endeavor as long as it is not implemented by providing amnesty for current illegal workers within the United States.

6. Is allowing Amnesty under the Immigrant Accountability Act of 2006 providing for permanent residency for qualifying illegal aliens and their spouses as well as their children the answer?

7. 2611 proposes that English is the language of the United States with no specifics, however; the State Court Interpreter Grant Program Act would provide state courts grants to assist individuals with limited English proficiency to access and understand court proceedings, and allocates funds for a related court interpreter technical assistance program.

8. 2611 will add additional costs to ensure compliance along the lines of necessary legal counsel as well as perpetual monitoring to insure compliance.

*Closing*

In closing, I believe that the current laws in effect should be strictly enforced and the borders secured within parameters already established. Internal I-9 audits, processing potential candidates for employment under Federal requirements, and responding to No-Match Letters as described above is very costly to me as well as other employers who want to comply with the laws of this country. Those attempts are aggravated due to lack of enforcement of laws already in place.

Chairman NORWOOD. Thank you very much, Senator Pearson, we appreciate you.

Mr. Gary Black is President of the Georgia Agribusiness Council. Mr. Black has been an active member of Georgia's agriculture community serving organizations such as the Georgia Farm Bureau to his recent services as President of the Georgia Agribusiness Council. Recently, Mr. Black was appointed to the U.S. House of Representatives Commission Examining Federal Payment Limitations.

Mr. Black majored in agricultural education at the University of Georgia and was the 2004 recipient of the Alumni Society's Distinguished Professional Award.

Mr. Black, you are now recognized for 5 minutes or so.

**STATEMENT OF GARY BLACK, PRESIDENT,  
GEORGIA AGRIBUSINESS COUNCIL, INC.**

Mr. BLACK. Thank you, Mr. Chairman, members of the Committee, it is a delight to be here. I am Gary Black, and I most recently served for 17 years as President of the Georgia Agribusiness Council located in Commerce, Georgia.

I appreciate this opportunity to offer, as requested, remarks on today's subject matter from the viewpoint of the Georgia farmer. Thank you, Mr. Chairman, for bringing your Committee to the great state of Georgia today and certainly it is a state where we

do have very many—some great challenges with regard to immigrant labor. My hope is to join with the members of the Subcommittee to identify solutions.

In a very complex way, the security of our nation demands responsible action now. Mr. Chairman, I have met with you and your staff dozens of times over the years as spokesman for Georgia agriculture. Many of our meetings have focused on today's topic. Georgia farmers need a reliable labor force that is legally documented to work within our nation's borders. Securing our borders and providing private industry with government controlled access to visa work programs will provide the stability needed for our economy, while keeping Americans that wish to work these jobs gainfully employed.

Let me be clear to the members of the Committee, I oppose illegal immigration, I oppose amnesty, I oppose new or accelerated pathways to citizenship. These topics must remain off the table.

Yet a legal, properly documented and accessible workforce is critical to Georgia's farm economy. Managing this workforce in such a way that participants perform work, pay taxes and return home, is vital to the sovereignty of our nation, in my view. These issues are of great importance to construction, hospital and a host of other industries, but I cannot speak on immigration and the impact to American workers and their wages on these sectors. But I can offer a perspective on the subject with regard to our farm and ranch families.

My belief is the impact of immigration on Georgia farm workers and farm wage rates is virtually zero. The reason is the shortage of local workers for farm-related jobs at any affordable wage rate. Unfortunately, many of these roles fall under the standard industrial classifications in agriculture.

Agriculture must have access to a labor program such as the existing programs that we have—not new programs, not new guest programs—the existing visa programs, to continue producing safe and affordable agricultural products that serve as the backbone of our nation's economy and security. If we, as a nation, do not think this is important, simply look to our dependence on foreign oil and then think again. We need a visa work program that is inclusive and sensitive to the needs of all farmers.

While the current Federal H-2A visa work program allows access to a legal and documented workforce, the costs are prohibitive for many farm operators. One of the biggest costs is a result of the adverse effective wage rate. And we have had a lot of discussions about bringing those individuals in across the border at a higher rate to our domestic workers. That must be replaced, and that is one of the impediments to our current program. I think if we address this and do so—but we have got to provide the necessary data to appropriately bring these wages in line with those of similar jobs in the area. We cannot have that dual system.

Mr. Chairman, farmers are price takers who operate in a capital-intensive, high-risk environment that is played out in a tilted global marketplace with respect to every business regulation, including labor. I strongly agree with you that we must secure our borders of our great nation. Future solutions to immigration policy must not include amnesty, nor new or accelerated pathways to citizen-

ship. We must establish an orderly, documented procedure that identifies those that seek to enter to perform temporary work, pay taxes, and return home. The U.S. unemployment rate is below the average of the last four decades. When the supply of American workers is exhausted as it is in many parts of agriculture today, someone must step in to do these jobs that are not being filled.

For agriculture economic engines located across our state and our nation, true immigration reform must include a pragmatic program for obtaining temporary documented agriculture labor now and in the future.

I thank Chairman Norwood and members of the Committee and I will look forward to entertaining any questions at the appropriate time.

[The prepared statement of Mr. Black follows:]

**Prepared Statement of Gary W. Black, President,  
Georgia Agribusiness Council, Inc.**

*Introduction*

Mr. Chairman and members of the subcommittee, I am Gary Black. I most recently served for 17 years as President of the Georgia Agribusiness Council located in Commerce, Georgia. I appreciate this opportunity to offer, as requested, remarks on today's subject matter from the viewpoint of the Georgia farmer. Thank you, Mr. Chairman, for bringing the House Committee on Education and the Workforce, Subcommittee on Workforce Protections, to the Great State of Georgia, where we have many immigrant labor challenges. My hope is to join with members of the subcommittee to identify solutions. In a very complex way, the security of our nation demands responsible action now.

*Georgia Agribusiness Council*

The Georgia Agribusiness Council (GAC) is a Chamber-like organization with a 40-year history of promoting sound policy for the breadth of Georgia's agricultural industry. Our membership ranges from farmers to input suppliers and from processors to those in transportation of food and fiber. Growing a healthy agricultural economy, promoting environmental stewardship and educating the public about the importance of agriculture are the hallmark objectives of the Georgia Agribusiness Council.

*General Remarks*

Mr. Chairman, I have met with you and your staff dozens of times over the years as a spokesman for Georgia agriculture. Many of our meetings have focused on today's topic. Georgia farmers need a reliable labor force that is legally documented to work within our nation's borders. Securing our borders and providing private industry with government-controlled access to visa work programs will provide the stability needed for our economy while keeping Americans that wish to work these jobs gainfully employed.

Let me be clear: I oppose illegal immigration. I oppose amnesty. I oppose new or accelerated pathways to citizenship. These topics must remain off the table. Yet, a legal, properly documented, and accessible workforce is critical to Georgia's farm economy. Managing this workforce in such a way that participants perform work, pay taxes and return home is vital to the sovereignty of our nation in my view. These issues are of great importance to construction, hospitality and a host of other industries. I cannot speak on immigration and the impact to American workers and their wages on these sectors, but I can offer a perspective on the subject with regards to our farm and ranch families. My belief is the impact of immigration on Georgia farm workers and farm wage rates is virtually zero. The reason is the shortage of local workers for farm related jobs at any affordable wage rate. Unfortunately, many of these roles fall under Standard Industrial Classifications in agriculture.

Agriculture must have access to a labor program, such as the existing H2A visa program, to continue producing safe, affordable agricultural products that serve as the backbone to our nation's economy and security. If we as a nation do not think this is important, simply look to our dependence on foreign oil and then think again. We need a visa work program that is inclusive and sensitive to the needs of all agricultural producers. While the current federal H2A visa work program allows access

to a legal and documented workforce, the costs are prohibitive for many farm operations. One of the biggest costs is a result of a USDA survey that produces the Adverse Effect Wage Rate (AEWR). The AEWR is a mandatory, guaranteed hourly wage presently set at \$8.37 in Georgia and is imposed by the US Department of Labor as a condition of participating in the H2A program. By replacing this AEWR wage requirement with a prevailing wage that is calculated with data from statistically reliable Occupational Employment Surveys (OES) conducted by the Bureau of Labor Statistics we can bring these wages in line with those of comparable agricultural jobs. Doing so will provide the necessary data to appropriately bring these wages in line with those of similar jobs in the area.

#### *Conclusion*

Mr. Chairman, farmers are price takers who operate in a capital intensive, high-risk environment that is played out in a tilted global marketplace with respect to every business regulation including labor. I strongly agree with you: we must secure the borders of our great nation. Future solutions to immigration policy must not include amnesty or new or accelerated pathways to citizenship. We must establish an orderly, documented procedure that identifies those that seek to enter to perform temporary work, pay taxes and return home. The U.S. unemployment rate is below the average of the past four decades. When the supply of American workers is exhausted, as it is today, someone must step into jobs that are not being filled. For agricultural economic engines located all across our state and our nation, true immigration reform must include a pragmatic program for obtaining temporary, documented agricultural labor, now and in the future.

Thank you again, Chairman Norwood and members of the Committee for the privilege to be here today.

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Chairman NORWOOD. Thank you very much.

If you would pass the microphone over. Is it Wenger [pronouncing]?

Dr. WENGER. Yes, it is.

Chairman NORWOOD. Dr. Jeffrey Wenger, Assistant Professor of Public Policy, University of Georgia. Dr. Wenger's research focuses on unemployment insurance policy and contingent employment. His current research focuses on the relationship between job search and the employer-provided health insurance.

Dr. Wenger holds an undergraduate degree in mathematics from the University of Southern California-Santa Cruz, and a doctorate degree in public policy from the University of North Carolina-Chapel Hill.

We welcome you, Dr. Wenger, and you are now recognized.

#### **STATEMENT OF DR. JEFFREY B. WENGER, ASSISTANT PROFESSOR OF PUBLIC POLICY, THE UNIVERSITY OF GEORGIA SCHOOL OF PUBLIC AND INTERNATIONAL AFFAIRS**

Dr. WENGER. Thank you very much.

I appreciate the opportunity to be here. Chairman Norwood, thank you; thank you, Representative McCollum and other Members of Congress, I appreciate. As I was introduced, that made this paragraph pretty much irrelevant.

Let me just start by saying—

Chairman NORWOOD. Pull the mic up just a little closer.

Dr. WENGER. Thank you. Let me just start by saying that I think this immigration debate in the late 1990's was non-existent for very good reasons. It was non-existent because the demand for labor outstripped the supply for labor, and worker productivity resulted in wage growth across the spectrum. As a consequence, poverty declined, health insurance coverage increased and wages for workers in the bottom of the earnings distribution rose faster than

the median wage for other workers. This is the first time that happened in almost a generation. Increases in the minimum wage, the expansion of the earned income tax credit and children's health insurance coverage were good policies that promoted and rewarded Americans' hard work. This is all that happened in the late 1990's.

Since 2001, the U.S. labor market has really reversed course. Poverty is increasing, health insurance coverage is declining and many workers have been caught off-guard as the purchasing power of their paycheck continues to erode. Workers want security—security in their jobs, security in their pay and security in their workplace. Border security, even if it were effective, would in the short run fail to address the harsh effects of a weak job market, declining real wages and gaps in health care coverage.

For many, the focus has been on border security with an emphasis on longer and taller walls guarded by greater numbers of INS agents and National Guardsmen. However, I believe the more important security threat, the one that is brewing below the surface of these immigration debates is the economic security of legal American workers, whether native-born or foreign-born.

The presence of undocumented illegal immigrants in the low-wage unskilled workforce is not disputed, but the size of this population and its real economic impact are less clear. Economic research on the issue is mixed. Some scholars have found significant effects on wage, while others have found much smaller effects. Research also indicates that less educated immigrants are more likely to receive government aid. However, surprisingly, little research has focused on the benefits of immigration.

So while the research is murky, it is clear that illegal workers work side-by-side every day in the same workplaces and on the same job sites. This simple fact means that both sets of workers—both legal and illegal—face the same threats in the form of job insecurity, wage insecurity and workplace insecurity. Job, wage and workplace insecurity exist because much of the low-wage or secondary labor market operates as a shadow market without proper legal enforcement or oversight.

I would first like to address the issue of job insecurity as it applies to the low-wage unskilled workforce. According to a July 2006 GAO Report on worker classification, there are 42.6 million employees in America who are classified as contingent. This newly released GAO Report is directly relevant to these hearings, and I hope each of you will find time to read it.

One of the most important findings of this report is that the Department of Labor failed to consistently investigate and report employee misclassification when investigating claims under the Fair Labor Standards Act. This misclassification systematically leads to more job insecurity.

Wage insecurity is another critical issue that affects a disproportionate number of contingent workers. The ability of employers to falsely classify workers as contingent allows them to withhold both wage and non-wage benefits. Worker misclassifications result in overtime pay being denied to workers who would otherwise be eligible to receive it. For example, in 2005, the Department of Labor recovered \$166 million worth of back pay for 219,000 workers. Yet this amount represents only a small fraction of what is owed to em-

employees as a result of misclassification. Additionally, workers who are misclassified as on-call or part time, are not afforded protection under the Family Medical Leave Act nor are they guaranteed pension contributions under the Employee Retirement Income Security Act, or ERISA.

Perhaps the greatest threat to the contingent workforce is the threat posed by conditions that these workers face each day upon entering the job site. After the Hamlet, North Carolina fire in 1991 that left 25 workers dead behind the chained doors of a chicken processing plant, improving OSHA enforcement of workplace safety was cited as an imperative need. Yet 11 years later, the GAO found OSHA's investigative procedures make it difficult to detect violations of worker protection laws.

The simple truth is that within our current system, there are laws in place designed to protect all workers, regardless of status, against these threats to their economic security.

Contingent employment is composed of both legal and illegal, native and immigrant workers. As long as the U.S. labor market continues to operate at less than its full potential, and wages for workers at the bottom of the earnings distribution continue to stagnate, economic security will be difficult to achieve. Sources of economic insecurity punish citizens and non-citizens alike. Millions of workers, native and immigrant, are faced with limited job opportunities. These workers need a government that will provide better oversight to ensure they are paid the full value of their wages and remain protected from harm in the workplace. The Administration and Congress should act responsibly to create conditions that foster job growth, but also provide strong enforcement of workforce protection laws. Securing our borders is not likely to secure workers' jobs, workers' pay or workers' safety in the short run.

Thank you very much for the opportunity to speak.

[The prepared statement of Dr. Wenger follows:]

**Prepared Statement of Dr. Jeffrey B. Wenger, Assistant Professor of Public Policy, the University of Georgia School of Public and International Affairs**

The debate on immigration over the past year has focused largely on the issue of security. For many, the focus has been on border security with an emphasis on longer and taller walls, guarded by greater numbers of INS agents and National Guardsmen. However, I believe the more important security threat, and the one that is brewing below the surface of these immigration debates, is the economic security of legal, American workers, whether native born or foreign born.

The presence of undocumented illegal immigrants in the low-wage unskilled workforce is not disputed, but the size of this population and its real economic impact are less clear. Economic research on the issue is mixed; some scholars have found significant effects on wages (Borjas, 1994, 2001)<sup>1</sup> while others have found smaller impacts (Card, 2001).<sup>2</sup> Research also indicates that less educated immigrants are more likely to receive government aid. However, surprisingly little research has focused on the benefits of immigration. This upside-down type of analysis, where you count the costs but not the benefits, is unlikely to lead to good policy decisions.

So while the research remains murky, it is clear that illegal workers work alongside legally documented low-wage American workers every day in the same workplaces and on the same job sites.

This simple fact means that both sets of workers, both legal and illegal, face the same threats in the form of job insecurity, wage insecurity and workplace insecurity. Job, wage and workplace insecurity exist because much of the low-wage or secondary labor market operates as a shadow market without proper legal enforcement or oversight.

During the late 1990s, immigration did not spark worker angst or ire. It was not an issue because the demand for labor outstripped supply and solid productivity

gains resulted in wage growth across the earnings spectrum. Poverty declined, health insurance coverage increased and wages for workers at the bottom of the earnings distribution rose faster than the median wage for the first time in a generation. Increases in the minimum wage, the expansion of the Earned Income Tax Credit and children's health insurance coverage were good policies that promoted and rewarded Americans' hard work.

But since 2001, the U.S. labor market has reversed course. Poverty is increasing, health insurance coverage is declining and many workers have been caught off guard as the purchasing power of their paychecks continues to erode. Workers want security—security in their jobs, security in their pay and security in their workplace. Border security, even if it were effective, would still fail to address the harsh effects of a weak job market, declining real wages, and gaps in healthcare coverage.

#### *Job Insecurity*

I would like to first address the issue of job insecurity as it applies to the low-wage unskilled workforce. According to a July 2006 GAO Report on worker classification (06-656), there are 42.6 million employees in America who are classified as contingent employees. The GAO defines these 'contingent employees' as "workers who do not have standard full-time employment."<sup>3</sup> Many of these workers work more than 40 hours per week but are contingent because their work arrangement is precarious: day laborers, temporary workers and on-call workers all have unpredictable schedules and unreliable paychecks.

Without the protection of permanent, full-time employment, contingent workers are more vulnerable to fluctuations in the labor market as they operate in a largely volatile and unstable environment. In their report, the GAO focused on the ability of employers to "exclude some contingent workers from receiving key worker benefits and protections such as the guarantee of workers' rights to safe and healthful working conditions, a minimum hourly wage and overtime pay, freedom from employment discrimination, and unemployment insurance."<sup>4</sup>

The GAO concluded that the Department of Labor (DOL) failed to consistently investigate and report employee misclassification when investigating claims under the Fair Labor Standards Act (FLSA).<sup>5</sup> More importantly, worker misclassification results in overtime pay being denied to workers who would otherwise be eligible to receive it. This practice is too common and represents a theft from the employee. For example, in 2005 the Department of Labor recovered \$166 million dollars in back pay for 219,000 workers.<sup>6</sup> Yet this amount represents only a small fraction of what is owed to employees as a result of misclassification.

#### *Wage Insecurity*

Wage insecurity is another critical issue that affects a disproportionate number of contingent workers. The same GAO report found that 16% of contingent workers had a family income of less than \$20,000, as compared to 8% of regular, full-time workers.<sup>7</sup> For certain subsets of the contingent workforce the percentage is even higher, for example 21% of on-call and day laborers fall below the \$20,000 household income threshold.<sup>8</sup>

Additionally, the ability of employers to falsely classify workers as contingent allows them to withhold non-wage benefits. For example, a worker classified as 'on-call' or 'part-time' is not afforded protection under the Family and Medical Leave Act, nor are they guaranteed pension contributions under the Employee Retirement Income Security Act.<sup>9</sup>

One of the best ways to protect the paychecks of American workers is to prevent illegal immigrants from undercutting worker pay. If this Congress is indeed interested in protecting American jobs then it should extend the protection of a prevailing wage provided under the Davis-Bacon Act. With prevailing wage protections, employers and illegal workers will not be able to undercut American workers by exploiting the largely unregulated contingent employment market.

#### *Workplace Insecurity*

Perhaps the greatest threat to the contingent workforce is the threat posed by the conditions these workers face each day upon entering their job site. After the Hamlet, North Carolina fire in 1991 that left 25 workers dead behind the chained doors of a chicken processing plant, improving OSHA enforcement of workplace safety was cited as an imperative need. Yet 11 years later, the GAO found in its report (02-925) on day laborers that the "WHD's (Wage Hour Division) and OSHA's investigative procedures make it difficult to detect violations of worker protection laws involving day laborers who often have non-standard work arrangements."<sup>10</sup> The GAO report from July 2006 confirms this difficulty, adding that the lack of proper employee classification makes this protection even more difficult.



These protections are made even more important by some recent findings of the Labor Department. The Department of Labor has found that all the poultry processing plants—which employ nearly half African-American and half immigrant workforce—surveyed by the Wage and Hour division were out compliance with Federal wage and hour laws in 2000.<sup>11</sup> Furthermore, DOL has “estimated more than half the country’s garment factories violate wage and hour laws, and more than 75 percent violate health and safety laws.”<sup>12</sup> The poultry industry employs more than 231,000 people nationally; the workforce of this industry alone is bigger than the total number of workers the US Department of Labor (Wage and Hour Division) recovered back pay for in 2005. If the Bureau of Labor Statistics is correct, countless thousands of American workers are being denied their hard earned wages due to a lack of enforcement by the DOL.

The simple truth is that within our current system there are laws in place that are designed to protect all workers, regardless of status, against these threats to their economic security. The ability of employers to wrongfully classify a large number of employees as contingent has allowed employers to circumvent current laws. In addition, the inability to properly track and monitor the growing underground cash-based labor market provides employers with additional opportunities to monopolize on the increased instability in the labor market.

Contingent employment is composed of both legal and illegal, native and immigrant workers. As long as the U.S. labor market continues to operate at less than its full potential, and wages for workers at the bottom of the earnings distribution continue to stagnate, economic security will be difficult to achieve. Sources of economic insecurity punish citizens and non-citizens alike. Millions of workers, native and immigrant, legal and illegal are faced with limited job opportunities. These workers need a government that will provide better oversight to ensure that they are paid the full-value of their wages and remain protected from harm in the workplace. The Administration and Congress must act responsibly to create conditions that foster job growth, and provide strong enforcement of workforce protection laws. Securing our borders is not likely to secure worker’s jobs, worker’s pay, or worker’s safety.

#### ENDNOTES

<sup>1</sup> George J. Borjas The Economics of Immigration Journal of Economic Literature, Vol. 32, No. 4. (Dec., 1994), pp. 1667-1717. George J. Borjas Does Immigration Grease the Wheels of the Labor Market? Brookings Papers on Economic Activity, Vol. 2001, No. 1. (2001), pp. 69-119.

<sup>2</sup> David Card Immigrant Inflows, Native Outflows, and the Local Market Impacts of Higher Immigration. Journal of Labor Economics, Vol. 19, No. 1. (Jan., 2001), pp. 22-64.

<sup>3</sup> GAO Report 06-656, Employment Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification, July 2006, p.1.

<sup>4</sup> Ibid., p. 1.

<sup>5</sup> Ibid., p. 35.

<sup>6</sup> <http://www.dol.gov/esa/whd/statistics/200531.htm>

<sup>7</sup> GAO Report 06-65, p. 14.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid., p. 21-22.

<sup>10</sup> GAO Report 02-925, Worker Protection: Labor’s Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance, September 2002, p.3.

<sup>11</sup> U.S. Department of Labor Poultry Processing Compliance Survey Fact Sheet U.S. Department of Labor January 2001

<sup>12</sup> AFL-CIO, “Responsible Reform of Immigration Laws Must Protect Working Conditions for all Workers in the U.S,” March 01, 2006, (<http://www.aflcio.org/aboutus/thisistheafclcio/ecouncil/ec02272006e.cfm>).

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Chairman NORWOOD. Thank you, Dr. Wenger.

Mr. D.A. King is the founder and president of the Dustin Inman Society, a coalition of citizens dedicated to educating the Georgia public on the consequences of illegal immigration.

Mr. King writes a column on illegal immigration in the Marietta Daily Journal and is featured in several other Georgia newspapers.

Mr. King is a guest host on nationwide radio broadcasts and is a frequent guest on radio shows addressing illegal immigration.

Mr. King is a retired Marine and a 22-year resident of Marietta, Georgia.

Welcome, Mr. King, and you are now recognized.

**STATEMENT OF D.A. KING, PRESIDENT,  
THE DUSTIN INMAN SOCIETY**

Mr. KING. Thank you very much, Mr. Chairman. I wish I were a retired Marine, I only served for 2 years, but thank you very much.

Thank you again, Mr. Chairman, members of the Subcommittee, I am D.A. King and I am President of The Dustin Inman Society. We are a coalition of citizens and non-citizens who are demanding that our laws be enforced. Our goal is to educate the public and ourselves on the consequences of illegal immigration.

I would like to begin by saying that my adopted sister is a real, legal immigrant, who happens to come from Korea. Our focus is on illegal immigration. At least it will be unless the Senate Bill changes illegal immigration into open borders. Then we will begin to attack too much immigration. I am very grateful to be here today.

Because I have made a decision to oppose illegal immigration on a full time basis, literally thousands of Americans have come to me via e-mail, telephone and in person and told me stories about their experiences because of illegal immigration. They share very common questions, observations and complaints. Normally they ask why employers are allowed to hire illegal labor in violation of existing laws, and why a nation that has put man on the moon and built and maintains more than 46,000 miles of interstate highway, cannot use that same expertise to secure our borders and prevent illegal crossings into our country.

Most Americans are aware of the one time amnesty of 1986. They can see very clearly that it did nothing to stop illegal immigration. It did not stop employers from hiring illegal aliens. It did nothing to secure our borders. Ignoring the climate of fear that has been created to intimidate them, Americans are now coming out of the shadows and asking why they are required to obey American laws while many employers and bankers and people with no legal right to be in this country suffer no punishment for not obeying the same laws.

For many of us, Congressman, the new American dream is to have borders as secure as are Mexico's and immigration and labor laws that are as enthusiastically enforced.

One of the most brilliant examples of the Senate's failure to protect the American worker is a provision in 2611 that would effectively expand the Davis-Bacon Act of 1931 to allow foreign workers to be paid a different and higher prevailing wage than American workers doing the same job.

I think the Senate bill also, respectfully, requires us to accept a redefinition of some very basic English words. Not many of us consider a worker as temporary if that worker is offered a path to citizenship with permanent resident status when his work visa expires. Guest workers, by definition, and if indeed truly noted, should be made to clearly understand that the period of employment in the United States is finite, and at the end of that period, they must return home, and that they are not a temporary or a guest worker if they bring their family and set up permanent residence and expect to spend the rest of their life in the United States.

Not many of us believe that American taxpayers should be required to subsidize that low wage labor. It is sad but true, I am personally acquainted with Americans who have lost their family businesses because they refused to violate existing immigration and employment laws, and could not compete with others who lacked the integrity to make similar decisions.

A friend of mine, a man named Charles Shafer of Lawrenceville, Georgia is one example. Mr. Shafer is a second generation construction framer—a carpenter—who has declared bankruptcy and endured years of unemployment due to an effort to compete with contractors who do hire illegal labor for considerably less than Mr. Shafer was making 10 years ago.

Another friend, Mr. Jeff Hermann of Oxford, Georgia, who I believe is outside holding a sign right now saying “Secure our borders, enforce our laws,” is in the pine straw, landscaping business. He has lost considerable business and earnings to illegal labor and has been forced to apply for welfare as a result.

Mr. Shafer’s and Mr. Hermann’s stories are but two of thousands that have come to my attention from Americans who are working for a better life in their own country. None of them sees the Senate Bill as a remedy to their plight. I am acquainted with many tax-paying Americans who have been denied employment simply because they do not speak Spanish. I have never spoken to anyone who can relate a story to me about wages going up in the United States because of illegal immigration.

It is important and I want everybody to realize this, please, no reasonable person that I am aware of blames anyone for wanting to live or work in the United States, just as no one I am aware of is of the opinion that we can continue to allow any worldwide willing worker to replace Americans in our job market or lower American wages. As American citizens, we understand that if it is possible to verify a credit card transaction in our local department stores, that it is also possible to verify employment eligibility in the United States without putting an undue burden on the employers.

I myself have enrolled the Dustin Inman Society in the Basic Pilot Program. I have verified myself as being eligible to work in this country. It took me about 6 seconds. I would respectfully make the educated observation that making the Basic Pilot Program mandatory would be one of the first goals of Congress.

I will close, and I thank you for your time. I respectfully implore you, Congressmen, to please do all that is possible from your elected office to secure American borders, to restore the rule of law to our nation and to create a state of fairness for the American workers. I do not believe that the Senate Bill will do any of those things.

Thank you very much. I will be glad to take questions later.

[The prepared statement of Mr. King follows:]

**Prepared Statement of D.A. King, President, the Dustin Inman Society**

Mr. Chairman, members of the Subcommittee, good morning.

My name is D.A. King. I am president of The Dustin Inman Society, which is a Georgia-based coalition of Americans of many backgrounds and ethnicities dedicated to educating the public on the consequences of illegal immigration.

I am grateful for the opportunity to provide testimony today regarding the recently passed Senate bill addressing our borders, the illegal immigration crisis in America and the impact of the Senate legislation on the American workforce.

In an effort to make clear my own level of concern with the illegal immigration crisis in our nation, I would like to make it known that three years ago I put aside my own business and have exhausted my personal savings in a full-time effort to educate myself and others on the issue.

As someone who has chosen to be active in a grass-roots effort to encourage my government to secure our borders and equally apply American law, I am in constant contact with countless American citizens on the issue—including immigrants who have obeyed American laws in their effort to join the American family.

My adopted sister is a real, legal, immigrant who came from Korea.

The thousands of concerned Americans who have contacted me over the years share a common theme in their questions, observations and complaints. They ask why employers are allowed to hire illegal labor in violation of existing laws—and why a nation that has put men on the moon and has built, and maintains, more than 46,000 miles of interstate highways has not used that expertise to stop illegal entries into their country.

Most Americans are aware of the “one time” amnesty of 1986. They see that it did nothing to secure our borders, end illegal immigration or discourage employers from hiring illegal aliens. Despite the concerted effort of many in the Senate to label S 2611 as anything but amnesty-again, most Americans with whom I speak understand it to be exactly that.

Ignoring the climate of fear that has been created to intimidate them, American citizens are coming out of the shadows and asking why they are required to obey American laws while many employers, bankers and people with no legal right to be in the U.S. suffer no punishment for not doing so.

I have no acceptable answers for them. I sadly admit that I find myself asking similar questions.

For many of us, the new American Dream is to have borders as secure as are Mexico’s and immigration and employment laws that are as enthusiastically enforced.

Absent their ability to speak here, I respectfully ask that today I be regarded as a humble voice of the millions of Americans who reject the senate bill and its intent in its entirety.

Time constraints prohibit even a brief outline of the many flaws in the Senate bill. Among those mistakes, one of the most brilliant examples of the senate’s failure to protect the American worker is the provision that would effectively expand the Davis Bacon Act of 1931 to allow foreign workers to be paid a different—and higher—“prevailing wage” than Americans who work at the same job.

While most Americans—including myself—are not experts on Davis Bacon, we find it easy to understand the injustice involved if the effect of the senate bill would be to “legalize” illegal labor and then provide an avenue whereby that labor then be rewarded with pay and benefits not available to all American workers.

Further, most Americans understand that the constant reference to “temporary” or “guest workers” in the senate bill amounts to an attempt to redefine very basic words in the English language.

Not many of us consider a worker as “temporary” if that worker is offered a path to citizenship with permanent resident status at the end of the allotted time on his work visa. I have many American friends who have been employed in countries all over the world as guest workers. All of them report the laws that demand their timely departure from the host nation at the prescribed date are vigorously enforced.

None of these former guest workers were offered citizenship in the nations in which they temporarily worked.

Guest workers, by definition, and if indeed truly required, should be made to clearly understand that the period of employment in the United States is finite and that bringing their families and setting up permanent residence is not part of the bargain.

American taxpayers should not be required to subsidize the low wage labor.

We do not have time here today for me to share the many stories from citizens who report instances of their wages decreasing because of competition from illegal labor and the willingness of employers hiring that labor in violation of existing law while bypassing Americans as job applicants.

Sadly, I am personally acquainted with Americans who have lost their family businesses because they refused to violate immigration and labor laws and could not compete with others in their trade who lacked the integrity to make similar decisions.

Mr. Charles Shafer of Lawrenceville, Georgia is but one example. Mr. Shafer is a second generation framing contractor—a carpenter—who has declared bankruptcy

and endured years of unemployment due to competing contractors hiring illegal labor who will work for considerably less than he was earning ten years ago.

With his permission, I attach to my written testimony Mr. Shafer's account of his experiences and ask that it be noted that it was written more than two years ago.

I also submit a written account from Mr. Jeff Hermann of Oxford, Georgia who operates a pine straw/landscaping business. Mr. Hermann has lost considerable business and earnings to illegal labor and has been forced to apply for welfare as a result. Mr. Hermann has agreed to having his story become record as well.

Mr. Shafer and Mr. Hermann share very similar stories and are but two of thousands that have come to my attention from Americans who are working for a better life in their own country.

None of them sees the Senate bill as a remedy to their plight.

I am acquainted with many tax-paying Americans who have been denied employment because they do not speak Spanish.

I have never spoken to anyone who can recount examples of American wages increasing because of immigration, either legal or illegal.

Most Americans understand that low-skilled jobs in America pay many times more than the same jobs in most of the world. The American people recognize that fact to be a magnet that draws illegal immigration into the United States. No reasonable person I am aware of blames anyone for wanting to live and work in the United States, just as no one I am aware of is of the opinion that we can continue to allow any worldwide "willing worker" to replace Americans in our job market.

We also understand that if it is possible to verify a credit card transaction at our local department store, it is also possible to verify employment eligibility in the United States without putting an undue burden on American employers.

As president of the Dustin Inman Society, I have enrolled in the Basic Pilot Program. I am a program administrator and have used that system to verify my own eligibility to work in the United States. Until a better system is designed, it is my educated observation that one immediate goal for Congress should be to make Basic Pilot verification mandatory and increase funding to do so.

Please allow me to conclude by saying that with the Immigration Reform and Control Act of 1986, we were promised that Americans would have secure borders and equal protection under the law in the workplace. Not many of us are willing to remain silent while similar promises are made without real enforcement teeth in whatever new legislation is made into law.

I respectfully implore you to do all that is possible from your elected office to secure American borders, restore the rule of law to our nation and create a state of fairness to American workers.

Remembering the amnesty of 1986, it is my belief that the Senate legislation would accomplish none of these things.

Thank you Congressmen.

*Written Account of Charles Shafer, Carpenter, Lawrenceville, GA*

My family has been in the residential construction business in one form or another for over 5 generations now. In the past 2 generations of my family most of us (my dad, 3 brothers, 6 uncles, and several cousins) have been residential framing contractors-carpenters.

As recently as 5-6 years ago we were the most sought after framers in the business. Our reputations preceded us as being the best of the best. Now we are all either unemployed or are struggling to survive economically.

I started my own business in 1988. Until that point I had worked for my father mostly. We have always had so much work at times we would turn work down.

I felt I had a very successful and lucrative business until late 1998 and the beginning of the year 1999. Then around the end of 1999 and the start of 2000 the calls slowed down and most of us were not getting as many from the builders whom we had worked for in the past as well as no calls at all from any new builders.

I remember it was around the end of 1999 it seemed on a daily basis someone would come by the job and ask if I needed help or if I knew anyone who did. They always made the statement even then "I can have as much help as you need here in the morning". Also I would like to state at that time I was working 2 legal immigrants with proper documentation, social security numbers, a driver's license, etc. (so I believed)

I tried every thing I could think of for the next year or so to save my business and career. At the time I even tried not only getting out and riding around trying to meet new people, leaving business cards on job sites, but also sending mailings to almost every builder listed in the Atlanta Home Builders Association announcing my availability and desire to work. These efforts were basically fruitless.

Every where I went I saw more and more what appeared to be Mexican crews and less and less American crews doing the work. For a short period of time thereafter, about a year or so, instead of the most of my work being all new work it became more in the field of remodeling. That eventually went away also.

During the year 2000 the phone calls started slowing down and eventually stopped. Even though the residential construction in Atlanta was obviously ongoing at an unbelievable pace I could not find work. Whenever I did find a new subdivision starting and some one to talk to I was told I was the wrong color and I have been told I would not work for the wages they paid. At the wages they were offering, they were right, there was no way to compete.

There's not any way then or now in my mind to compete with illegal labor. The work I was offered, when I was offered work was at such a reduced standard wage, less than half of what the same work paid only a few years prior, a person could not remain legal and still endure all the labor cost or insurance cost or taxes associated with trying to run a proper business.

I even tried for a year or so to employ a mixture of Americans and Mexicans.

Then all Mexicans. It doesn't take long for them to become Americanized. By this I'm referring to the fact the only reason they wanted to work for me instead of one of their own was because it did not take them long to come to the conclusion an American employer would pay them a higher wage than a Mexican employer. Then I became aware that they were all illegally here in the U.S. This resulted in my having to pay all associated taxes on their behalf. That's when I decided it was not worth it anymore and basically gave up. I wasn't getting any phone calls for work and you surely couldn't ride around and find any work. The illegals had it all.

Even though I have never announced to anyone in this field of my intentions to quit, to this date I have only had 2 phone calls for work in the past 3 years or so. These came from people I had done personal homes for in the past not from any builders. More or less I have tried to explain to them I had retired, not by choice, but because I could not compete against an ever increasing immigrant population.

I used to have to be very careful when I was talking to someone not to use the "illegal" terminology. Whenever I did people would respond with an ignorant comment to the effect these people were not illegal and I would respond by stating I had personally met several hundred these past few years and not a one were legal.

Since post 9-11 I have tried repeatedly to find work. My families work (the one or two remaining) is so sparse they can offer little or no help and still survive themselves. At almost 51 years old, even though I feel I have many good years left, no one I have met wants to employ me.

I have applied for many Superintendent positions to no avail. Hardly a response for so long, I finally gave that avenue up also. Why not I often ask myself. I have so much experience and knowledge about residential construction from start to finish.

It is, believe it or not, almost understandable to me because of the availability of such a younger work force now. Plus I don't speak Spanish. I also usually know more about the business, codes etc., than the people I have tried to go to work for and I think that may have intimidated them some.

We as Americans will work and have worked with the Mexicans. It's a fact they will not return the favor. Do you know of any American who works for a Mexican in the construction business? I don't.

I was taught from day-one a home is usually the largest investment a person makes in life. It was instilled into my natural behavior from childhood to do the very best job possible for a person and not to cut corners or to walk away from an error or mistake. The majority of my relatives had the same raising and that's what made us once upon a time the most desirable in the residential construction field. Now this business seems to be only about profit margins and how fast you can finish a job. Not many seem to care about quality anymore.

I have continually searched for a job and would now accept one even if its a floor sweeping job. But I have come to the conclusion that I am unemployable especially since 9-11 and with all the illegal immigrants available.

We as a family of 5, a daughter 14, a daughter 10, and a son 5, have barely survived these past few years. My wife and I filed bankruptcy last year. We had already refinanced our modest home which we only owed 3 years on trying to survive.

I am a proud man even to this day. I have absolutely refused any hand outs in life and will not accept one now.

Please understand residential framing/construction was to be a career I have looked forward to since childhood. It was a dream job for me even though the work was hard and the hours long. The pay while it lasted was great. We lived the American dream—if we wanted something we got it and got up the next day went to work and paid for it.

I can't imagine what I will do in life now that the illegal immigrants are present in such enormous numbers in today's society. I am adamant I will figure it out, how and which way to go; right now I'm not sure. I'm just not willing to give up just yet. My family surely deserves more than what illegal immigration has brought into their lives.

If you have any more questions or need anything else please feel free to contact me.

CHARLES SHAFER, JR.,  
Lawrenceville, GA.

*Written Account of Jeff Hermann, Landscaper, Oxford, GA*

My name is Jeff Hermann. My partner and I run a small landscaping business called "The Pinestraw Guys". We've been at it now for almost eight years. Our work is fairly labor-intensive, as it involves spreading the pinestraw in the decorative 'islands' of peoples' homes and businesses.

When we started the business, we didn't have any customers, so we'd load up the truck and knock on doors all day looking for jobs. It was tough at first, but as time went by we grew. After two years we had enough customers to stop knocking on doors and hire someone to help us.

Our customers loved our work and referred their friends and neighbors to us.

Life was getting pretty good. We hired a few more guys, and the business continued to grow.

That's all changed now.

About two and a half years ago we started noticing a drop-off in our business.

Several of our accounts had stopped calling. When we called them to find out why, they said simply that we had been under-bid by a competitor. I had a hard time believing that because we operate on a very small mark-up to begin with. Now, I'm not a bashful man by any means, so I called my competition and asked them how they could do it so cheap.

"Simple," was the reply, "I hired some Mexicans down at the Home Depot. They're illegals, so they work really cheap."

I know of several landscape contractors who now do the same thing. They pay these illegal aliens 5 or 6 bucks an hour, cash under the table of course, and pocket the difference. Well, MOST of the difference. The rest they give to their customers in the form of lower prices. That's all good for the contractor and the customer, but not so good for me.

Suddenly I'm in competition with someone who's willing to do this work for minimum wage or less.

By last fall my income had dropped over 50%, and I had to apply for food stamps in order to feed my kids. I also applied for Medicaid because I could no longer afford my health insurance. I qualified for the food stamps (Thank God) but my income, less than \$200 a week by then, was too high to get Medicaid. While talking to my caseworker about this, she let it slip that if I had been an illegal alien, I would have qualified for 'emergency' Medicaid and been covered by it that day. Needless to say, my jaw almost hit the floor.

Let me re-cap what I've been through because of illegal immigration.

My business has been cut in half.

I've had to lay off American workers.

I can no longer afford health insurance.

I've had to take welfare.

And to top it off, I can't even get Medicaid.

I'm not asking for handouts, I'm asking for that 'level playing field' our President loves to espouse. Secure the border. Deport illegal aliens. Enforce the law. Give me my life back.

Please.

JEFF HERMANN,  
Oxford, GA.

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Chairman NORWOOD. Thank you, Mr. King.

Next, we have Mr. Terry Yellig, a member of the law firm of Sherman, Dunn, Cohen, Leifer and Yellig in Washington, D.C. Mr. Yellig frequently represents the Building and Construction Trades Department of AFL-CIO before courts and Federal and state administrative agencies and provides legal advice concerning legislation.

Mr. Yellig, you are now recognized.

**STATEMENT OF TERRY YELLIG, ATTORNEY, SHERMAN, DUNN, COHEN, LEIFER & YELLIG, P.C., ON BEHALF OF THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO**

Mr. YELLIG. Thank you, sir.

I appreciate the opportunity to appear today before this Subcommittee because—and in addition to comments and statements that have been made over the past 2 months concerning the prevailing wage requirement applicable to the recruitment and employment of foreign guest workers as provided for in Title IV of S. 2611—I really want to address and there have been comments by members of the panel already to that effect. I think many, if not most, of these comments and statements generally reflect a misunderstanding and a confusion concerning the intended purpose and effect of the prevailing wage requirement in S. 2611 that requires some clarification and explanation.

The Senate Bill creates a new temporary guest worker program called the H-2C visa program. The bill includes numerous labor protections intended to assure that admission of H-2C guest workers does not adversely affect American workers' wages and living standards. I want to repeat that. The purpose of these labor protections is, first and foremost, to ensure that the admission of an H-2C guest worker does not adversely affect American workers' wages and living standards, while at the same time preventing exploitation of the guest workers.

S. 2611 prohibits employers from hiring temporary foreign guest workers under the H-2C visa program unless the employers have first tried to recruit American workers for a job vacancy. In attempting to recruit American workers—and when I use the term American workers, I mean citizens and others who are not native-born but are in the United States legally, I am not talking about undocumented aliens in any way, shape or form. And in fact, Title IV does not address undocumented workers. Title VI does and there is no prevailing wage requirement that applies to undocumented aliens under Title VI, it does not apply.

In attempting to recruit American workers, employers must offer to pay not less than the wage rate they actually pay comparable employees in their incumbent work force or the prevailing wage for the occupation, whichever is higher. Then, in the event that the employer is unable to recruit a qualified American to fill the job vacancy, the employer must submit an application to the United States Department of Labor for a determination and certification. The certification by the Department of Labor confirms that American workers who are qualified and willing to fill the vacancy are not available and that employment of a foreign guest worker will not adversely affect the wages and living standards of American workers similarly employed.

The Senate Bill contains additional provisions intended to ensure that employers do not hire temporary foreign guest workers to replace American workers who are on layoff, on strike or locked out of their jobs in the course of a labor dispute. In addition, the Senate Bill requires employers to provide the same benefits and working conditions to temporary foreign guest workers that they provide



to their American employees in similar jobs. Furthermore, employers would be required, under the Senate Bill, to provide workers' compensation insurance to temporary foreign guest workers they hire.

In addition, there is a provision in Title IV that would prohibit an employer of a temporary guest worker from classifying that person as an independent contractor. And I think that is a very important provision as well, for many of the same reasons that Dr. Wenger referred to when he was talking about the contingent workforce.

Most of the criticism of the prevailing wage requirement applicable to foreign guest workers under this H-2C visa program in S. 2611 is that it entitles these workers to payment of a higher wage rate than American workers similarly employed receive. This is a misperception of the prevailing wage requirement in the bill, based on a misunderstanding of its purpose and intent.

The perceived impact of foreign workers on our labor market has been a major issue throughout the history of the United States immigration policy. And in fact, as I indicate in my written statement, going back to 1885, the original immigration laws absolutely prohibited the admission of foreign aliens for the purpose of employment. It was not until 1952 that Congress passed the Immigration and Nationality Act, which, for the first time, permitted the admission of aliens for the purpose of employment. And at that time, Congress included in the bill as Section 212, which requires the Secretary of Labor to certify to the Attorney General and the Secretary of State that there are not sufficient Americans "able, willing and qualified" to perform the work proposed to be performed by the alien immigrant, and that the employment of such foreign workers would not adversely affect the wages and living standards of similarly employed American workers.

For many years, beginning in 1967—and I think this is important to understand—the Department of Labor's labor certification regulations implementing the Immigration Act provided that in order to determine whether prospective employment of both immigrants and non-immigrants seeking to perform skilled or unskilled labor in the United States, will adversely affect wages or working conditions of American workers, the Secretary of Labor must determine, under this provision, whether such employment will be for wages and fringe benefits not less than those prevailing for American workers similarly employed in the area of intended employment of the foreign worker.

Thus, from 1967 until March 28, 2005, the Department of Labor's regulations implementing the labor certification requirement in the Immigration Act provided that, where available, the prevailing wages applicable to foreign workers shall be the wages, the rates determined to be prevailing in the occupations and in the localities involved, pursuant to the provisions of the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act, depending on the occupation. These prevailing wage rates are applicable to job openings for which employers sought Department of Labor certification, without regard to whether they were otherwise covered by the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act. Consequently, the idea of using prevailing wage rates determined

under either the Davis-Bacon or the Service Contract Act is not new or expansionary. It has been in effect since at least 1967.

In fact, until the 1990's, the only time the Department of Labor regulations permitted use of a prevailing wage rate other than one issued under the Davis-Bacon or the Service Contract Act for alien labor certification purposes was when there was no such rate available. And in those instances, the Department of Labor used as a standard the Bureau of Labor Statistics' most appropriate wage rates.

In May of 2002, however, the Secretary of Labor published proposed changes in the labor certification regulations, which essentially codified the Department of Labor's guidelines permitting use of prevailing wage rates based on the wage component of the BLS—the Bureau of Labor Statistics—Occupational Employment Statistics wage survey or employer provided wage survey data that meets the requirements described in the Department of Labor guidelines. In addition, the Secretary's proposed regulations that eliminated mandatory use of the prevailing wages determined pursuant to the Davis-Bacon Act and the Service Contract Act where otherwise applicable. For this reason, the Building and Construction Trades Department believes and urged the Senate to codify a requirement that applies in the first place, the Davis-Bacon Act or the Service Contract Act, as the prevailing rate for purposes of determining whether there is an adverse impact on Americans' wages and living standards whenever there is an application for admission of a temporary guest worker. Otherwise, the American people can have no real confidence that the admission of a foreign guest worker is not just as a source of cheap labor that will undermine the wages and living standards of American workers. And that is the purpose, and that is the intended effect, of this provision. It is to protect American workers.

And finally, I would like to point out that if there was a situation where an employer found that it was necessary to hire a foreign guest worker under this program and pay, let us say, the Davis-Bacon rate if it was a construction job; if that was the circumstance and in reality that wage rate was higher than that employer is paying the rest of his workforce, in reality, the truth is that that employer will either opt not to hire the foreign guest worker because of the impact it will have on his current workforce, or he will probably adjust the wages of his incumbent workforce upwards so as to be the same as the foreign guest worker. Either way, it is not undermining or adversely affecting American workers' wages and living conditions. If anything, it will benefit them. And that is important, because I have heard so much misunderstanding about the purpose and effect of this, and it is just wrong.

Thank you.

[The prepared statement of Mr. Yellig follows:]

**Prepared Statement of Terry R. Yellig, Attorney, Sherman, Dunn, Cohen, Leifer & Yellig, P.C., on Behalf of the Building and Construction Trades Department, AFL-CIO**

Mr. Chairman: My name is Terry Yellig, and I am an attorney with the law firm of Sherman, Dunn, Cohen, Leifer & Yellig, which is located in Washington, D.C. I am appearing today on behalf of the Building and Construction Trades Department, AFL-CIO, the eleven (11) national and international labor unions affiliated with it,

and more than three million workers engaged in the building and construction industry in the United States.

I appreciate the opportunity to appear today before this subcommittee because there have been numerous erroneous comments and statements made over the past two months concerning the prevailing wage requirement applicable to the recruitment and employment of foreign guest workers in Title IV of S. 2611, the Comprehensive Immigration Reform Act of 2006, passed by the Senate in May 2006, which I want to address. These comments and statements generally reflect misunderstanding and confusion concerning the intended purpose and effect of the prevailing wage requirement in S. 2611 that requires some clarification and explanation.

The Senate bill creates a new temporary foreign guest worker program called the "H-2C visa program." The bill includes numerous labor protections intended to assure that admission of H-2C guest workers does not adversely affect American workers wages and living standards while at the same time preventing exploitation of the foreign guest workers. S. 2611 prohibits employers from hiring temporary foreign guest workers under the "H-2C visa program" unless they have first tried to recruit American workers for a job vacancy. In attempting to recruit American workers, employers must offer to pay not less than the wage rate they actually pay comparable employees in their incumbent workforce or the prevailing wage for the occupation, whichever is higher. Then, in the event an employer is unable to recruit a qualified American to fill the job vacancy, the employer must submit an application to the U.S. Department of Labor for a determination and certification. The certification confirms that American workers who are qualified and willing to fill the vacancy are not available, and that employment of a foreign guest worker will not adversely affect the wages and living standards of American workers similarly employed.

The Senate bill contains additional provisions intended to ensure that employers do not hire temporary foreign guest workers to replace American workers who are on lay off, on strike, or locked out of their jobs in the course of a labor dispute. In addition, the Senate bill requires employers to provide the same benefits and working conditions to temporary foreign guest workers that they provide to their American employees in similar jobs. Furthermore, employers would be required under the Senate bill to provide workers compensation insurance to temporary foreign guest workers they hire.

Most of the criticism of the prevailing wage requirement applicable to foreign guest workers under the "H-2C visa program" in S. 2611 is that it entitles them to payment of a higher wage rate than American workers similarly employed. This is a misperception of the prevailing wage requirement in S. 2611 based on a misunderstanding of its purpose and intent.

The perceived impact of foreign workers on our labor market has been a major issue throughout the history of U.S. immigration policy and law, because such workers can present a threat of unfair wage competition. This perception is because foreign workers whose desperation for jobs, low cost of living in their countries of origin, and restricted status in the United States can cause them to accept wages and living standards far below U.S. standards. Thus, Congress enacted the Foran Act in 1885, which made it unlawful under any circumstances to import foreign workers to perform labor or service of any kind in the United States.

This bar on employment-based immigration lasted until 1952, when Congress enacted the Immigration and Nationality Act, which brought together many disparate immigration and citizenship statutes and made significant revisions in the existing laws. The 1952 Act authorized visas for foreigners who would perform needed services because of their high educational attainment, technical training, specialized experience, or exceptional ability. Prior to admission of these employment-based immigrants, however, Section 212 of the 1952 Act required the Secretary of Labor to certify to the Attorney General of the United States and the Secretary of State that there were not sufficient American workers "able, willing and qualified" to perform this work and that the employment of such foreign workers would not "adversely affect the wages and living standards" of similarly employed American workers. Under this procedure, the Secretary of Labor was responsible for making a labor certification. In 1965, Congress substantially changed the labor certification procedure by placing the responsibility on prospective employers of intended immigrants to file labor certification applications with the Secretary of Labor prior to issuance of a visa.

The current statutory authority that conditions admission of employment-based immigrants on labor market tests is set forth in the exclusion portion of the Immigration and Nationality Act, which denies entry to the United States of immigrants and nonimmigrants seeking to work without proper labor certifications. The labor

certification ground for exclusion covers both foreigners coming to live as permanent legal residents and as temporarily admitted nonimmigrants. Section 212(a)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5), states:

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—(1) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (2) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

For many years beginning in 1967, the Department of Labor's labor certification regulations implementing Section 212(a)(14) (since recodified as § 212(a)(5)) provided that, in order to determine whether prospective employment of both immigrants and nonimmigrants seeking to perform skilled or unskilled labor in the United States will adversely affect "wages" or "working conditions" of American workers, the Secretary of Labor must determine whether such employment will be for wages and fringe benefits no less than those prevailing for American workers similarly employed in the area of intended employment of the foreign worker.

Thus, until March 28, 2005, the Department of Labor's regulations implementing the labor certification requirement in Section 212(a)(5) of the Immigration and Nationality Act provided that, where available, the prevailing wages shall be the rates determined to be prevailing for the occupations and in the localities involved pursuant to the provisions of the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act. See e.g., 32 Fed. Reg. 10932 (July 26, 1967) (codified as 29 C.F.R. § 60.6). These prevailing wage rates were applied to job openings for which employers sought Department of Labor certifications without regard to whether they were otherwise covered by the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act. Consequently, the idea of using prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act is not new or expansionary.

In fact, until the 1990's, the only time the Department of Labor regulations permitted use of a prevailing wage rate other than one issued under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act for alien labor certification purposes was when there was no such rate available. See 20 C.F.R. § 656.40(a)(2) (2004).

In that case, DOL guidelines, which were initially adopted in October 1997 and modified in April 1999, provide that prevailing wage rates for labor certification purposes can be based on wage surveys conducted under the wage component of the Bureau of Labor Statistics' expanded Occupational Employment Statistics ("OES") program or an employer-provided wage survey. DOL's guidelines further provide that alternative sources of wage data can be used where neither the OES survey nor the employer provides wage data upon which a prevailing wage determination can be established for an occupation for which an employer is seeking a labor certification, so long as the data meets the criteria set forth therein regarding the adequacy of employer-provided wage data.

On May 6, 2002, however, the Secretary of Labor published proposed changes in the labor certification regulations, which essentially codified DOL's guidelines permitting use of prevailing wage rates based on the wage component of the OES wage survey or employer-provided wage survey data that meets the requirements described in the DOL guidelines. 67 Fed. Reg. 30466 et seq., 30478-79 (May 6, 2002). In addition, the Secretary's proposed regulations eliminated mandatory use of prevailing wages determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act where otherwise applicable. *Id.* at 30478.

The Secretary of Labor's May 6, 2002 Notice of Proposed Rulemaking explained that she had decided that it is inappropriate to use prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act as the minimum rates that will not adversely affect the wages of American workers similarly employed. The reason offered in the Notice of Proposed Rulemaking for this conclusion was that the procedures used to determine Davis-Bacon Act and McNamara-O'Hara Service Contract Act prevailing wage rates are significantly different from those set forth in DOL's guidelines for determining prevailing wage rates for labor certification purposes in occupations for which a prevailing wage rate under one of these laws is not available. *Id.* at 30479. Hence, the Secretary's reason for eliminating mandatory use of prevailing wage rates determined pursuant to these two federal prevailing wage laws was not that they were less accurate than the wage component of the OES program, but merely because their respective methodology is different. *Id.* Eventually, the Secretary of Labor adopted the

changes proposed in the 2002 Notice of Proposed Rulemaking on December 27, 2004, which became effective on March 28, 2005. 69 Fed. Reg. 77326 et seq., 77365-66 (December 27, 2004).

Notwithstanding, the Republican Policy Committee's July 11, 2006 report and many others have argued recently that audits of the Davis-Bacon wage survey process demonstrate that it is less accurate than the wage component of the OES program. It is doubtful, however, that the OES program or any other wage survey process could withstand the kind of scrutiny applied to the Davis-Bacon wage survey process. After all, both the OES program and the Davis-Bacon wage survey program depend entirely on the voluntary participation of employers to submit wage data, and the Davis-Bacon wage survey process now includes a nationwide employer payroll-auditing component, which better assures the accuracy of the wage data submitted by participating employers. The OES program does not include an auditing component.

In any event, this recitation demonstrates that use of prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act as minimum wage rates that will not adversely affect the wages of American workers similarly employed is not a concept introduced for the first time in S. 2611. On the contrary, use of prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act as the minimum rates that will not adversely affect the wages of American workers similarly employed was integrally intertwined for nearly 40 years in the labor certification process. Use of prevailing wage rates based on these federal prevailing wage laws was regarded as best serving the intended purpose of the labor certification process, which is to protect American workers from unfair wage competition by foreign workers seeking permanent and temporary employment opportunities in the United States.

It was always understood that, in rare instances, this process might result in payment of higher wages to newly hired foreign workers than to an employer's incumbent workforce. The possibility that mandatory use of prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act might create such a wage disparity is minimal inasmuch as it is highly unlikely that an employer will opt to hire a foreign worker if it upsets the employer's wage structure, unless the employer truly has no other choice. In that case, the employer is more likely than not to raise the incumbent workforce's wage rate. In any event, this dynamic provides the greatest assurance that employers cannot take advantage of a pool of foreign workers willing to accept employment at a depressed wage rate because they are desperate for jobs, come from countries that have low costs of living, and have restricted status in the United States.

In addition, Congress recently enacted the Consolidated Appropriations Act of 2005 that added Section 212(p)(4) to the Immigration and Nationality Act, 8 U.S.C. § 1182(p)(4), which provides:

Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.

The Secretary of Labor's recent adoption of new regulations that eliminated mandatory use of prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act, coupled with enactment of Section 212(p)(4) of the Immigration and Nationality Act, has undoubtedly reduced the prevailing wage rates used in the foreign worker labor certification process. These actions have adversely affected the wages of American workers similarly employed, because the minimum wages employers are now required to pay foreign workers issued permanent and temporary employment-related visas are more likely to be lower. This is exactly the opposite effect intended by Congress when it incorporated the labor certification process in the Immigration and Nationality Act in 1952 and amended it in 1965.

It was precisely because of these regulatory changes that the Senate decided to codify the prevailing wage provision applicable to the new "H-2C guest worker visa program" created by S. 2611, so that American workers' wages will not be further adversely affected. Thus, contrary to the assertions of some, use of prevailing wage rates determined pursuant to the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act as the minimum wage rates that will not adversely affect the wages of American workers similarly employed is harmonious with the intended purpose and intent of the labor certification process that has been consistently applied to ap-

plicants for employment-based permanent and temporary visas seeking to perform skilled and unskilled labor since 1952. As such, codification of the prevailing wage requirement in the new "H-2C guest worker visa program" created by Title IV of S. 2611 in no way represents an expansion of the Davis-Bacon Act, nor will it provide greater wage protection to foreign guest workers than to American workers similarly employed.

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Chairman NORWOOD. Mr. Phil Kent, National Spokesman, Americans for Immigration Control. AIC is a non-partisan grassroots organization founded in 1983.

Mr. Kent is an author, columnist and media commentator. Mr. Kent served in Washington, D.C. as press secretary and public affairs advisor to the late Senator Strom Thurmond and appears frequently on national news shows.

Mr. Kent holds a journalism degree from the Henry W. Grady School of Journalism at the University of Georgia and he is from Augusta, Georgia.

Welcome, Mr. Kent.

**STATEMENT OF PHIL KENT, NATIONAL SPOKESMAN,  
AMERICANS FOR IMMIGRATION CONTROL**

Mr. KENT. Thank you, Mr. Chairman. I am here on behalf of the Americans for Immigration Control, the oldest immigration control group in the country, founded in 1983.

The heart of my testimony is this—importing cheap, low-wage labor does not a prosperous economy make. The massive influx of unassimilated foreign laborers pushes our economy ever closer to the Third World economies of the countries that they flee. We are importing poverty by allowing uncontrolled immigration.

The research in this area is not really murky. There is a huge caseload of research. For example, the National Research Council reports that an immigrant to the U.S., without a high school diploma, consumes \$89,000 more in government services than he pays during his lifetime. The Center for Immigration Studies and my group have consistently seen research that shows that most of the illegal immigrants coming into this country make less than \$10,000 a year and have less than an eighth grade education.

I should probably point out that yes, Mr. Black is right, we do have a need for guest worker programs, we have guest worker programs, especially in agriculture. Some work, some are broken. But we do not need any new guest worker or amnesty program that is liable to depress the wages of the American laborer on a larger scale than that which we have already seen.

Here is a quick example, Mr. Chairman, that is not in my testimony. You will remember after Hurricane Katrina hit Alabama, Mississippi and Louisiana, you had American workers promised jobs for the cleanup, the contractors were ready to go. What happened? According to the Washington Times and other news outlets, 30,000 illegals swarmed into that area and took the jobs, stole the jobs, from the American workers. In fact, the Washington Times quoted one employment contractor, Linda Swope, as saying we promised the Americans jobs and then had to tell them they could not have the jobs. They were crying and we were crying too, because the illegals took those jobs.

Illegal aliens are wage thieves, and they are taking jobs from unemployed Americans, especially low-income whites, blacks and teenagers. In fact, the teenage unemployment rate is at the highest since World War II because of illegal immigration.

Let us talk a little bit about some of the provisions of S. 2611 that some of the other witnesses and the Chairman have covered. They have talked about the Davis-Bacon Act of 1939 extensively. But let me remind you of this, why was it—and I would address this especially to Members of Congress—that we could allow the Department of Homeland Security to actually waive the Davis-Bacon requirements after Hurricane Katrina to allow those illegals to come in? I think we need to stop that. So we can talk about the language in all the sections of Davis-Bacon all we want and you can write anything you want, but we should not allow the executive branch to use that sweeping power to just get rid of Davis-Bacon requirements.

This bill, S. 2611, would supposedly protect American workers by ensuring that new immigrants would not take away jobs. However, get a load of this—I want to re-emphasize what Mr. King pointed out, the bill's definition of "United States worker" includes temporary foreign guest workers. So the protection is meaningless. Then there is a provision saying foreign guest workers cannot be terminated from employment by any employer except for just cause. That is the language of the Senate Bill. However, as we know, American agriculture workers can be fired for any reason whatsoever. Is that fair?

The Senate Bill also creates a totally unnecessary new F-4 visa category. It is essentially an automatic green card for any foreign student who earns a graduate degree in engineering or the physical sciences at a U.S. university. As Professor Norman Matloff at the University of California at Davis has extensively researched, there is absolutely no shortage of American masters and Ph.D. engineers. There is no need for this new visa category. Another example of foreigners trying to steal American jobs.

Progress toward achieving sustainable yearly immigration levels can come only by rejecting the massive and expensive amnesty and guest worker programs in S. 2611 and hopefully, Mr. Chairman, winning House-Senate conference approval of the enforcement only House Bill 4437.

Thanks.

[The prepared statement of Mr. Kent follows:]

**Prepared Statement of Phil Kent, National Spokesman,  
Americans for Immigration Control**

Members of the Committee, thank you for the opportunity to address the critical policy issue of massive immigration's impact on American workers and their wages and, in particular, the effect as it relates to S. 2611 (the Senate-passed Hagel-Martinez immigration bill). I am the national spokesman for Americans for Immigration Control, headquartered in Monterey, Va., and executive director of its sister group the American Immigration Control Foundation. I am a longtime journalist, author and president of my own media/communications consulting company in Atlanta.

Please remember that importing cheap, low-wage labor does not a prosperous economy make. Hard as it may be to believe, the massive influx of unassimilated foreign laborers pushes our economy ever closer to the Third World economies of the countries they flee. These immigrants are usually willing to settle for slave-like wages, and contribute to an ever-growing underclass. The United States—a country built on innovation, technology, and higher education—cannot continue to flourish

in the 21st Century if its chief burden is to put to work a class of unskilled, uneducated labor which consumes more of our country's resources than native-born Americans.

In the past immigration levels were much smaller and the welfare infrastructure—from which illegal and legal immigrants disproportionately draw from—could handle the flow. But the U.S. has never had such a massive influx of illegal immigrants, to the tune of over 1 million every year from 1990-2005. Also, an additional one million legal immigrants arrive annually.

In this context, before analyzing the workforce/workplace specifics of S. 2611, let's reflect on some "urban myths" relating to illegal immigration.

#### *Urban Myths about Illegal Labor*

Illegal immigrants do the jobs that Americans refuse to do. This is false. There are jobs that Americans will not do without proper compensation. Americans are ready and willing to fill most jobs in the country in most job categories, but there is a powerful job magnet for illegals because of employers who slip low-wage workers cash under the table and thus evade paying payroll taxes and benefits.

The U.S. benefits from increased output. While many will argue this point, the cost that the foreign labor passes onto the American taxpayer far outweighs that percentage gained in output. If higher outputs were the sole concern of the nation, then why would there even be a cap on any immigration? A large majority of illegal immigrants currently come from Mexico alone. They take jobs in the U.S. and send their earnings back home to their families. They are the chief industrial asset that funds the economy of their home country, and thus take away money that would be spent by American workers on American goods and services. Journalist and publisher Ed Marston notes in a February 3, 2003 essay:

It would be good for Americans to clean our toilets, write our computer programs, slaughter our chickens and cattle, and pick our strawberries.

And it would be good for Mexicans to cope with their population and economy without using the United States as an overflow tank, and without using the poor Mexican people as cash cows, to be exported as if they were crude oil or cattle.

#### *The U.S. suffers from labor shortages.*

The sheer supply of illegal laborers who will work for slave wages creates no need for employers to improve the positions they have, restructure to create jobs that offer worthy compensation, or innovate for a future that does not rely solely on manpower. Some employers claim the need to hire a workforce of illegal immigrants as necessary to run their businesses successfully or even at all. What they should be focused on is obeying our existing labor laws and finding ways to be successful without hurting the American laborer.

Illegal immigration is "bad"; legal immigration is "good." Any type of guest-worker or "amnesty" program that would make it legal to work is liable to depress wages of the American laborer on a larger scale than that which has already been seen. In the short term, profits for these employers would increase but, alternatively, there are major expenditures passed on to the American taxpayers ranging from healthcare to education.

#### *The Losers*

##### *Low-Skilled American workers*

Adding more immigrants to our own labor force means that Americans who do not have high school or college degrees will now have even more competition in finding work. According to the Center for Immigration Studies, in a 2005 study titled "Immigrants at Mid-Decade" by Steve Camarota:

- In 2005, about 30 percent of immigrants age 18 and over in the labor force had not graduated from high school.
- For immigrants who arrived between 2000 and 2005, 34 percent had not completed high school.
- This means that any effect immigration may have on the wages or job opportunities of natives will disproportionately affect less educated workers, who are already the lowest paid workers.

This study also went on to describe how states with a high concentration of immigrants saw the largest numbers of unemployed native Americans. Also, for the first time since the end of World War II, teenage unemployment is at its highest rate due to illegal immigrants stealing traditional teen summer job slots.



*Black Americans and Other American-born Minorities*

The effects of illegal and legal immigration are most widespread among the workforce of black and other native-born Americans. Evidence published by the group Numbers USA includes the following information:

A study by Harvard professor Dr. George J. Borjas finds that, by increasing the supply of labor, immigration between 1980 and 2000 cost native-born American men an average \$1,700 in annual wages by the year 2000. However, the effects of immigration on wages were most profoundly felt by native-born black and Hispanic Americans who suffered 4.5-5% wage reductions as compared with the 3.5% wage loss felt by native-born white Americans.

For minority groups, this is great cause for concern and its leaders and elected representatives must take issue with politicians willing to further open the door to foreign labor.

*Technology and Innovation*

The use of the current stream of cheap imported labor is stifling innovation. As a world leader, we lose ground and become less likely to be technological trailblazers. My colleague and immigration researcher Mark Krikorian explains that "by holding down natural wage growth in labor intensive industries, immigration serves as a subsidy for low-wage, low-productivity ways of doing business, retarding technological progress and productivity growth."

*Small Businesses*

On May 4, 2005 Matthew Reindl, the operator of a family owned business—Stylecraft Interiors of NewYork—presented testimony to the Subcommittee on Immigration, Border Security and Claims:

Illegal immigrant labor hurts American workers and legal immigrant workers that respect our laws. Working Americans have seen their wages and their working conditions decline every time they compete with illegal immigrant labor \* \* \* If my competitors are allowed to break the law, and hire low-wage illegal immigrant workers, they gain an unfair and illegal advantage over my company and depress the wages of my employees. My competitors will undercut my prices, and could possibly cause me, and other employers who follow the law, to go out of business.

*Financial Compensation and Benefits*

Companies willing to hire illegal employees can clearly see their law-abiding competitors and their American employees suffer. Law-abiding businesses are left vulnerable and question why they must suffer if they are honest and responsible employers. Stagnant and depressed wages, and poor benefits, all are effects of the non-enforcement of existing employment laws. Reindl continues by saying:

I have not been able to give my employees raises because illegal aliens are depressing the labor wages of my industry. My product price has not gone up because competitors have either dropped health insurance for their employees or hired cheaper help, many of whom I believe are illegal aliens. I know this to be true from the many job applicants I interview. When I put a help wanted ad in the paper, half of those applying admit to being illegal immigrants and admit they have worked in nearby factories.

*It's a Lawless Business*

An article by Karen Rives in the Feb. 26, 2006 issue of The Charlotte News and Observer says, "In North Carolina, not a single business has been fined for hiring illegal immigrants since 1999. That's in spite of Section 247A of the Immigration and Nationality Act, the federal law that prohibits employers from knowingly hiring illegal aliens." She reports on the sentiments of Tom O'Connell of the US Immigration and Customs Enforcement Center in Cary, North Carolina. He explained the emphasis of his limited staff is to arrest felons and laborers in worksites like nuclear power plants versus arresting truckloads of blue collar illegal immigrants. "I can't arrest every truck full of painters going to some job in Apex," he said. This scenario is repeated in every state throughout the country, and must be ended. (By the way, if there is an arrest just one truck full of painters, the word will spread in a community fast.)

*Cheap Labor, Not So Cheap*

Companies utilizing the sheer abundance of foreign and all-too-often illegal manpower are able to profit while the government turns a blind eye toward their offenses against the American worker. These companies pass along the resulting costs to the taxpayer. They neglect to pay payroll taxes and health insurance that would have been necessary in providing a salaried position for an American citizen. Local taxpayers foot the cost of educating the children of the illegal and foreign laborers,

and hospitals are forced to manage the paying the bills for the uninsured laborers and their families. Reflect on what columnist Phyllis Schlafly notes about the growing cash-only, underground economy:

The employers commit a double offense if they pay the illegal workers with cash in order to evade paying payroll taxes and providing benefits to workers. For our government to tolerate the vast underground economy is unjust honest businessmen who pays their taxes. Bear Stearns estimates that taxes lost from the underground economy could wipe out our entire federal deficit of \$400 billion. The Los Angeles Times reported December 13, 2005 that Los Angeles County's underground cash economy is allowing employers to evade \$2 billion a year in taxes needed to support the social safety net.

The government's already existing default "amnesty" allows the practice to continue, and the buck gets passed all the way down to the employer of illegal immigrants. A North Carolina businessman explained to The News and Observer, "If we don't want them here, why doesn't the government send them back? \* \* \* The government lets them cross the border, so why should we worry about it?" Unfortunately this sentiment permeates the minds of many who employ an illegal workforce and assume that they are not responsible for their own actions because the government has not worked to uphold the law.

While some would call this aiding and abetting, this same businessman also went a step further as many others do: He helped his illegal employees get tax ID numbers. This allows the illegal immigrants to apply for car loans, housing leases, utilities, and other essentials. The tax ID number acts in the same manner as what U.S. citizens would normally use a Social Security number for. The fact that the government is still basically turning turn a blind eye to illegal immigrants in many areas further promotes the ideology that hiring them is a just practice.

#### *The Impact If S. 2611 Becomes Law*

The Center for Immigration Studies and other researchers estimate nearly 20 million illegal aliens will receive amnesty under the Hagel-Martinez bill. And remember, too, this number does not include the bill's huge increase in future legal immigration, which is expected to double or triple from one million a year under current law.

The bill will not only reward millions of illegals with amnesty, taxpayer-subsided services and a road to citizenship, it will also greatly increase the flow of cheap labor by dropping the cap for H-1B worker visas. Professor Norman Matloff of the University of California, Davis, writes in a CIS Backgrounder that the "H-1B program has long been criticized by U.S. programmer and engineering groups as a cheap labor program that adversely affects job opportunities for American workers. The critics charge that another reason industry is so keen on hiring foreign workers is that they are de facto indentured servants. This gives employers leverage \* \* \* to force foreign workers to put in long weekend and evening hours. \* \* \*

Dr. Matloff reveals another threat to potential American engineering students with the bill's creation of a new F-4 visa category. He rightly labels this "a dangerous threat to the employability of American programmers and engineers \* \* \* a new F-4 visa category that would lead to an essentially automatic green card for any foreign student who earns a graduate degree in engineering or the physical sciences at a U.S. university."

Perhaps one of the most outrageous features of S. 2611—aside from rewarding lawbreakers with services like college tuition breaks and eventual citizenship—is requiring employers to pay foreign workers higher wages at construction jobs. We need to get the message out to the public—and to senators who may not have even realized they voted for this provision—that aliens in construction jobs as part of the guest worker program created by S. 2611 would receive higher wages than American workers at the same job site. GOP lawmakers, especially, ought to heed the conclusion of a report by their own Republican Policy Committee on Capitol Hill. "This is unfair to U.S. workers, inappropriate and unnecessary," the report states.

Mr. Chairman, as you well know, the Davis Bacon Act of 1939 requires that the local prevailing wage be paid to all workers employed in federally-contracted construction projects, or in work done for the District of Columbia. Those wages, which are up to four or five times higher in some construction fields than the federal minimum wage of \$5.15 per hour, are set by the U.S. Labor Department. The Senate bill incredibly requires that the higher wage must be paid to temporary foreign workers in all construction occupations, even if the project isn't federally funded or otherwise under the jurisdiction of the Davis-Bacon Act.

This bill would supposedly protect American workers by ensuring that new immigrants would not take away jobs. However, the bill's definition of "United States worker" includes temporary foreign guest workers, so the protection is meaningless.

Also, as I read a provision of S. 23611, foreign guest workers admitted cannot be “terminated from employment by any employer \* \* \* except for just cause.” However, American agriculture workers can be fired for any reason.

There are other unfair provisions of S. 2611 which expand the paperwork burden for contractors who utilize subcontractors, and I am concerned that Americans who don’t speak foreign languages in some workplaces will be involved in serious safety issues and other communications concerns. To cite just one example, I have in my files the 2004 resignation letter of a Miami-Dade Water and Sewer Department employee who quit because she was discriminated against for not speaking Spanish.

Heritage Foundation researcher Robert Rector discovered yet another dangerous part of the 614-page bill. Because unskilled laborers would be allowed to “self-petition” under the amnesty proposal, obtaining permanent residency would bypass the Department of Labor—the agency that is supposed to monitor immigration to ensure that American workers are not displaced by foreign immigrant labor. And, as Dr. Rector underscores, there is nothing “temporary” about the guest worker program in S. 2611. Nearly all “guest workers” would have the right to become permanent residents and then citizens. And there are virtually no enforcement aspects of the Senate bill.

#### *Breaking the Addiction*

Our country was founded on laws to protect and serve our citizens. The U.S. attorneys in all 50 states must begin to vigorously prosecute, fine and even jail those employers who knowingly hire illegal immigrants. More local and state law enforcement agencies must become involved in this effort. By cracking down and holding companies responsible for their illegal actions, the flow of immigrants into all 50 states will decrease. This type of self-deportation will take time, since the demand has evolved over several decades. But an immigration reduction will still occur, and none too soon to help the American worker.

Progress toward achieving sustainable yearly immigration levels can come only by rejecting the massive and expensive guest/worker amnesty in S. 2611 and winning House-Senate conference committee approval of the “enforcement only” House Bill 4437.

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[Applause.]

Chairman NORWOOD. Order. Thank you very much. Order, please.

I want to remind the members of the panel that we will now be asking questions of the witnesses and Committee Rule 2 imposes a 5-minute limit on all questions. I will try to hold us to the 5 minutes, but we will have two or three rounds, so be prepared for me to come back to you at a later point.

I now recognize myself for 5 minutes.

Mr. Kent, since you ended, I will start with you. Your testimony, in addition to what you were able to say, states that any new amnesty plan that is called for in the Reid-Kennedy bill and McCain and Martinez, will likely impact the American taxpayer in terms of healthcare and education costs.

Can you estimate what these costs will amount to, given a potential absorption of 20 million current illegal aliens into the country?

Mr. KENT. Yes, sir, Mr. Chairman. In fact, I would refer you and the Committee to a study that I think you are very familiar with that came out right after May 15, and it was by Heritage Foundation researcher Robert Rector, and he pointed out that the cost could run into the billions. And I will just leave it at that. It is an incredible, staggering statistic, especially when you realize that unskilled laborers would be allowed to self-petition under this amnesty proposal, thereby obtaining permanent residence and bypass the Department of Labor. And that is the agency, of course, that is supposed to monitor immigration to ensure that American workers are not displaced by foreign immigrant labor. So as Dr. Rector

underscores, there is nothing temporary about the guest worker program. They will all have a right to be here, and they can all bring in, as you know, their families under chain migration.

Chairman NORWOOD. The Federation of American Immigration Reform, FAIR, estimates that in Georgia alone, the cost of illegal immigration on the social infrastructure, that would be, Mr. Kent, including uncompensated emergency medicine, education and incarceration, amount to nearly \$1.2 billion. And these numbers expand to \$2.1 billion in 2010, 3.6 billion in 2020 if the Reid and Kennedy and McCain and Hagel Bill get their way. These are staggering statistics and figures.

Can you corroborate these figures and/or have any additional information for the record regarding these figures?

Mr. KENT. I agree with the Federation of American Immigration Reform numbers. We have seen other numbers from the Washington-based Center for Immigration Studies, my own group corroborates that. And Mr. Chairman, that is right, there is no such thing as cheap labor being cheap.

Chairman NORWOOD. Mr. Black, in your testimony, you stated that—and you started out by saying “I oppose illegal immigration. I oppose amnesty. I oppose new or accelerated pathways to citizenship.”

Mr. BLACK. Yes, sir.

Chairman NORWOOD. “These topics,” you further say, “must remain off the table. Yet a legal, properly documented and accessible workforce is critical to Georgia’s farm economy.”

These sentiments are quite different from many I hear every day in Washington, D.C. Many believe that the only way to meet the challenges facing agricultural labor is to offer amnesty to illegal aliens. Now that is what we hear in Washington—not what I am saying.

Mr. BLACK. Yes, sir.

Chairman NORWOOD. Given your experience, how can farmers and producers in Georgia agriculture meet their labor challenges without amnesty?

Mr. BLACK. Well, just through the development of hopefully some adjustments in H-2A program. That is a program that has been, as you know, Mr. Chairman, been available for well over 20 years. I mentioned earlier about the adverse effective wage rate that is one of the challenges that establishes I believe \$8.37 that you must pay a worker, that actually you are bringing in a group of workers that actually supplant some of those other jobs at really an elevated wage rate. It is much like some of the discussions that we have already had here, setting up a dual system. I believe that will be one of the key changes to the existing H-2A program, to give some flexibility. One thing that is important to point out to Georgia farmers, those in vegetable production and those that usually pay on a piece rate, actually there are very competitive wage rates out there that actually surpass, far beyond, the minimum wage. But there are still some jobs just in warehouses where we need the flexibility in the wage rate. Those adjustments to H-2A I think would be very advantageous.

Some earlier issues with regard to housing and others that could be amendments or issues that we can talk about later, but cer-

tainly I think working within the framework of the existing H-2A program with some adjustments could provide us the legal workforce that we need.

Chairman NORWOOD. Why do more people not use H-2A today?

Mr. BLACK. Well, there are just some streamline issues of dealing with the bureaucracy that I think could make that paperwork easier for farmers to deal with. Not to make it easier for people to get here, but easier for the farmers to actually deal with that—I think improving our verification system that Senator Pearson mentioned earlier. Those additional tools could be provided that would streamline the program, still provide strong verification and that they come here on a temporary basis, perform the task that they are assigned, and go home.

And those certainly could be aspects of minor adjustments to H-2A that I think would be, again, advantageous to Georgia producers, and you would see more of them using it.

Chairman NORWOOD. Ms. McCollum, my time is up. You are now recognized for 5 minutes for questions.

Ms. MCCOLLUM OF MINNESOTA. Well, thank you, Mr. Chairman, and I appreciate the opportunity for a second round of questions.

I would just like to go back to what Mr. Kent was talking about and that is, because of what happened after Katrina. I went down to Louisiana and the 9th Ward and had an opportunity to talk to people there. And Davis-Bacon was waved off. Well, we have had an emergency here, you do not have to pay the prevailing wage, so there were contractors who took gross advantage of that, bringing in lower wage workers while citizens of Louisiana, citizens of the United States, residents of Louisiana were told that if they wanted to do a job, rebuild their city, they would have to do it for next to nothing. And we repeatedly asked for hearings and finally, the Democrats I think, along with some of our Republican colleagues, and there were Republicans who joined us on that issue, convinced the President that he had to change his mind on that issue. And then we saw American workers able once again to help rebuild their city. But that was not a decision that this Member of Congress made, to remove Davis-Bacon down in the Louisiana area.

I would like to ask Mr. Yellig, you know, this whole issue of how Davis-Bacon somehow is not going to protect American workers, and Mr. King mentioned a friend of his who was being paid less wages than he needed to survive. My understanding is that the Davis-Bacon and Service Contract are going to be used as a benchmark. In other words, you have to offer, you have to post the job for American workers at that salary, and if no American worker applies, none whatsoever, then you can go through the steps it would take to hire the guest worker, but that guest worker gets hired at that wage. So that the next time that there is an opening, the American worker is not competing for a low ball wage without any opportunity for benefits.

Could you elaborate on that more? My understanding is it is to protect American workers.

Mr. YELLIG. That is correct. That is what the purpose and intent of the labor certification process, relying upon the prevailing wage standard, has been, as I said before, for 40 years. This is not a new idea, it has been applied under the H-2B visa program which ap-

plies to the same category of workers as the H-2C guest worker category would apply to, just in a broader—for a longer period of time. The H-2B only applies to people coming here temporarily for a period not to exceed 1 year. The H-2C program would allow a guest worker to remain in the United States for a period up to 3 years, provided that that person remained employed and was not unemployed for I believe a period longer than 45 days. If they were unemployed for a period of longer than 45 days, they would have to go home.

But, as you indicated, the intended purpose of the use of the Davis-Bacon and Service Contract wage rates is to establish a benchmark. It is not to apply the Davis-Bacon Act per se to employers that hire guest workers. For example, the Davis-Bacon Act has a provision in it that requires employers to file weekly certified payroll reports because they are government contractors. That requirement does not apply to employers of guest workers. Also, employers—

Ms. MCCOLLUM OF MINNESOTA. So the extra paperwork does not apply?

Mr. YELLIG. That does not apply.

Ms. MCCOLLUM OF MINNESOTA. Thank you.

Mr. YELLIG. The same thing is true with regard to the penalties for violating the Davis-Bacon Act, in addition to requiring a violator to pay the underpayments of wages for violating the Act. In addition to that, an employer under the Davis-Bacon Act or the Service Contract Act is subject to debarment for a period of 3 years. Meaning that the employer is ineligible to receive government contracts or subcontracts for 3 years—a very, very serious penalty.

If an employer violates the prevailing wage requirement in the immigration statute, the matter will be between the employer and, not the INS any more, but the Department of Homeland Security. It will not be subject to debarment under the Davis-Bacon Act. None of the provisions of the Davis-Bacon Act would apply to an employer hiring a guest worker under this legislation or any of the other temporary visa programs. Only the wage—it is merely a point of reference to establish what is generally acknowledged to be the prevailing wage rate for a construction worker as far as Davis-Bacon is concerned, and a service worker as far as the Service Contract Act is concerned.

Ms. MCCOLLUM OF MINNESOTA. Thank you, Mr. Chair.

Chairman NORWOOD. Thank you, ma'am.

Mr. Price, you are now recognized for 5 minutes.

Dr. PRICE. Thank you, Mr. Chairman, and I want to thank all of the witnesses for your testimony. I think the discrepancies in the testimony highlight really the challenge that many of us in Congress have in making certain that we identify true facts, real facts, and come up with appropriate solutions.

I want to concentrate for a few minutes on employee verification. I am troubled by, Senator Pearson, your comments that it takes 67 days to be able to go through, in the minimum, the shortest time to be able to verify whether an individual is appropriate to hire. Is that accurate?

Mr. PEARSON. It is inaccurate, my math was incorrect, it is actually 77 days.

Dr. PRICE. Seventy-seven days.

Chairman NORWOOD. Pass the mic down, please.

Dr. PRICE. I am going to start down here if I may. I want to talk about the Pilot Employment Verification Program. And as I mentioned in my opening statement, only 2300 of the nation's 5.6 million employers utilize that pilot program. I would like the opinion—I assume that we all believe that no employer goes into business to be a policeman for illegal aliens. That being the case, I also assume that employers want to, by and large, follow the law. Is it a good idea to make that program mandatory? That is one of the things that Congress is considering. Mr. Kent, do you mind starting there and just passing it on down?

Mr. KENT. Yes, our group does want to make that mandatory and I know some states have already done that, and there are some good examples where it has worked very well.

Mr. YELLIG. As far as I understand, the AFL-CIO, which I do not represent, but the Building Trades is part of it and the Building Trades Department has no problem with making that employer verification process mandatory. We have no problem with that, we agree with it.

Dr. PRICE. Mr. King, I know you stated that you believe it ought to be mandatory.

Mr. KING. Yes, Congressman. I am a program administrator in the Basic Pilot Program. It is important to realize that Basic Pilot can only be used to verify a newly hired employee. It is not a screening process. Once hired, you can then run the Social Security number and the pertinent information through. It does go through DHS files and Social Security databases, and it will give you a reflection of whether or not the Social Security number matches the person and whether or not that person is in this country legally. It has a 94 percent approval rate. Much is made about the trouble—and I quote, the trouble—with Basic Pilot. It normally comes from people who desperately do not want it to be used. There is an appeal process. If you get a false negative from a newly hired employee that would give you the indication that this employee is not eligible to work in the United States, there is an extensive appeal process and the employee is not fired or released from employment until that appeals process has been completed.

If the question is do I support the use of the Basic Pilot Program on a mandatory basis; yes, sir.

Dr. WENGER. It seems clear to me that the answer should be yes. I mean we have to take care of both the supply side of this equation and the demand side of this equation. So we clearly have a bunch of people coming into the country illegally looking for work. That is the supply of these laborers, and they would not come here if there were no jobs for them. So the demand side of this equation must be taken care of and an employee verification system is an absolute must. You do not get an equilibrium without both the supply and the demand.

Mr. BLACK. Yes.

Mr. PEARSON. Yes.

Dr. PRICE. Does doing that, making that mandatory, does that help your situation, Mr. Pearson?

Mr. PEARSON. It certainly does. One of the aggravating things that we face is that, as Mr. King said, all this is for new employees and we do have—in the past, have gotten no-match letters for existing employees. In one case, the man was with us for 8 years. We sent him notice of the no-match letter, expecting him to come in and deal with it. We simply never saw him again, meaning he knew he was not going to get through the process. But that does not mean he went back, I believe he was from Honduras, that means he went right down the road to another employer and was probably hired on the spot the same day. That is the reality of what we face.

Dr. PRICE. Thank you. I want to—I think everybody agrees or believes that we ought not be hiring illegals, I am not sure about you, Dr. Wenger, but I am going to come back to that.

I am interested in knowing—

Ms. MCCOLLUM OF MINNESOTA. I hope you do because I do not think so.

Dr. PRICE. Well, I will be glad to point to some of his testimony, and we will talk about that on my second round.

I am interested in knowing who on the witness panel believes the Senate Bill would not stop an employer from hiring illegals, anybody want to comment on that? Mr. King.

Mr. KING. I hope I have the question right, Congressman. If it was, do I believe the Senate Bill would not stop employers from hiring illegals; that is my belief, yes, sir.

Dr. PRICE. That it would not stop.

Mr. KING. I do not believe that the 2611 bill would do any more to stop hiring of illegal aliens than did the Simpson-Mazoli Act of 1986 because I have little faith in my government to enforce the laws in that bill. I have seen what happens when Congress, respectfully—I am not a member of any political party—when Congress passes laws about illegal immigration. Most of the American people that I am in contact with are demanding that our borders be secured and at the same time our employers suffer some real sanctions. And I do not subscribe to the enforcement first. I simply subscribe to enforcement. But no, sir, I do not believe that the Senate Bill or the people who wrote it have any intention of enforcing that law.

And if I may, in 20 seconds, in 1986, Simpson-Mazoli had a provision in it, it's 1324(a), paragraph (i), I believe, that addresses preemption by the states. At present, the states are prohibited, under the preemption clause in Simpson-Mazoli from going after the employers. There is a very small loophole there dealing with licensing. That exact same provision is in 2611. I do know that section, it's 274(a) paragraph (j). It stops the states from criminally punishing the employers. I see some doubt up there, but I will be glad to provide that text if required.

Thank you.

Mr. KENT. May I address that, Mr. Chairman, just very quickly too?

Not only are there not any enforcement mechanisms in S. 2611 but there are more magnets to bring in illegals into the country. As we all know, we found out later, that you get tuition breaks for college for illegals, you of course get the path to eventual citizen-



ship, and you get your Social Security wages paid for as you come into this guest worker program. So there are more magnets to bring in more illegals into this country under S. 2611.

Chairman NORWOOD. Thank you very much, Mr. Price; which has something to do with the fact that many of us believe that if you do not secure the border first, you absolutely have done nothing, no matter what you write into a bill.

With that, I recognize Chairman Deal for 5 minutes for questions.

Mr. DEAL. Thank you, Mr. Chairman.

There is a huge skepticism that prevails, I believe, in the public's mind, and I believe prevails to a large extent in much of the Congress' mind about the effectiveness of enforcing any law as it relates to illegal immigration. The testimony I have heard today about a new bill; i.e., the Senate Bill versus the House Bill, has a presumption that we are going to enforce the new law. I have great skepticism, if we cannot enforce the current law, how do we have any confidence we are going to enforce an even more difficult law to enforce.

[Applause.]

Mr. DEAL. Let me point out some of the fallacies that exist now. And Mr. Black, I will start with you. You mentioned the H-2A program where we bring in agricultural workers, they are supposed to be here for a limited period of time. Do you have any idea how many of them disappear into our economy?

Mr. BLACK. Many.

Mr. DEAL. Many of them, many of them.

Chairman NORWOOD. Let the record reflect the witness said many.

[Laughter.]

Mr. DEAL. We have a reform that we put in place as a part of the 1996 immigration reform package that said that for people who were going to sponsor immigrants to come into this country, that they would be assuring the government at every level that those that they sponsored would not become a burden on the social system, that they would be responsible for medical bills, they would be responsible for other expenses that their sponsored individual incurred.

I would ask this panel, have any of you ever heard of a single case where a sponsor has been held accountable for an individual they sponsored?

[No response.]

Mr. DEAL. That is the information I have—none.

Chairman NORWOOD. Let the record reflect, nobody.

Mr. DEAL. Now if we want to get serious about this, we have got to begin to get serious about the enforcement side of it. We have heard a debate here about whether the prevailing wage or the Davis-Bacon wage rate is what we should adopt. There are certainly arguments on both sides, one of the arguments being that if we do not adopt the higher wage rate, then we are going to bring down and displace American workers because of that. On the other hand, you would have employers I am sure saying that if you raise it up to an inappropriate level, then there is no real advantage there of being able to attract anybody to work after all.

Now those are the anomalies that I think we have existing here. But let me tell you some anomalies that I think, and problems that are in the current system, and I am sure Mr. Pearson has probably seen this. A 17 or an 18 year old worker who comes in and he claims as he fills out his employment forms that he has either seven or eight dependents. Have you seen things like that?

Mr. PEARSON. Yes, sir.

Mr. DEAL. And we do not do anything about it. What that means in practical terms is, for those who say well, these people that are coming into our country are paying their taxes—what that means is there is no withholding of income tax because he claims enough dependents to make him over the exempt amount.

Now those are the kinds of things that we ought to be tightening up in our current law. Does anybody have a problem with us trying to tighten those up?

Mr. PEARSON. No, Congressman.

Mr. BLACK. No, sir.

Mr. DEAL. They are not in either of our bills, quite frankly, and I think they honestly need to be.

Mr. Chairman, I have taken more than my time, but I appreciate the fact that despite our differences of perspective here, hopefully we have a common interest of doing what is best for our country.

Thank you.

Chairman NORWOOD. Thank you, Mr. Deal. Members, we will start and go around again, if that is agreeable with everyone.

I want to get back to—I recognize myself for 5 minutes of questions.

I would like to get back to Davis-Bacon. We talk as if that is the most wonderful law that we have ever put on the books. And I am going to tell you, folks, without this expansion in the Senate Bill, it really still is not a very good idea. All it really amounts to is that when we build this courthouse here in Hall County, the contractor who builds this courthouse is told by the Labor Department in Washington, D.C. what he has to pay in terms of wages. Now the Labor Department in Washington, D.C. has no ability to determine that with any sense. They do not get it right, they never have gotten it right. In fact, I would like to submit for the record an executive summary from the Office of the Inspector General.\* It simply lists a platitude of reasons why the Labor Department never gets the Davis-Bacon wages correct.

In an economy that we have so much employment, I promise you, the wages are not low. It is hard to get people to work today. You have to pay good wages if you want somebody to come in and help you build this courthouse. And we do not need one bit of help from Independence Avenue in Washington, D.C., people who never get outside the beltway, to determine what we need to do right here in Hall County.

Now the Senate Bill, this immigration bill, takes it a step further. Now it says you have to have Davis-Bacon wages for illegal immigrants, people who have broken our law, who have come

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\*Submitted and placed in permanent archive file, "Executive Summary," Concerns Persist with the Integrity of Davis-Bacon Act Prevailing Wage Determinations, Office of Inspector General, U.S. Department of Labor, No. 04-04-003-04-420, 30 March 2004, <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf>.

across our borders illegally and you have to pay them those wages. It does not matter if Federal tax dollars are involved now, it does not matter that the taxpayer is not paying for a grading job Senator Pearson's company is doing. Maybe I hired him to do it, a citizen. And now the Labor Department in Washington, who cannot get it right under Federal building, wants to tell us how to do it in all other construction projects across the country. That makes absolute no sense to me. Happily, it made no sense to 38 Republicans in the Senate.

We talk about well, is this a Democratic bill, is it a Reid-Kennedy bill or is this a McCain-Hagel-Martinez bill. Well, it is hard to tell. But I can tell you this, 38 Democrats voted for it and 23 Republicans voted against it. We do not control the Senate. Nobody controls the Senate.

[Laughter.]

Chairman NORWOOD. Not even the Vice President of the United States controls the Senate and he is the President. You have to have 60 votes in there to get anything done. We cannot get anything done there unless you have 60.

So I know whose bill this was. This was a Democratic bill that most Republicans voted against and this panel has already enumerated some, just some, of the terrible things that are inside this Senate Bill.

I promise you, we do not have enough days this week to go on over all the bad parts of that Senate Bill. It is the worst piece of legislation I have seen in 12 years in the U.S. House of Representatives. And for those of you who may wonder, you can rest assured it is not becoming law. We are not going to let that happen.

[Applause.]

Chairman NORWOOD. We are not going to let that happen through the House of Representatives.

But the bad news is we need an immigration bill. We need to secure the borders. I mean shut her down, folks. Then we need to deal with a good guest worker program and we need to deal with the fact that we have got 20 million illegal immigrants in this country right now. But we cannot deal with those facts until we get some kind of something out of the Senate that you can sit down with and have a discussion about. The bill they have got now is not one. You could throw half of it away, and you could not conference with it. Hopefully when we go back after the elections, in a lame duck session, maybe, just maybe, we can sit down and have some grown ups try to turn up a good immigration bill.

My question is to each of you. If you were sitting in the U.S. Senate, starting with you, Mr. Kent, would you have voted for that bill?

Mr. KENT. Well, I would not have voted for the bill. In fact, it is very interesting, as all of you know, all too often lawmakers do not read what is in the bill. There was a U.S. Senator just a few weeks ago—I will give him an A for honesty—actually admitted he did not know some of these sections, these horrible sections, were in the bill. And so I think there is a lot of re-thinking on the part of some of the U.S. Senators. And it was very instructive to see that our own U.S. Senator, Johnny Isakson, did receive 40 votes when he did try on the U.S. Senate floor, and it was bipartisan,

to try to get an enforcement only bill in the Senate. So I think that gives you in the House of Representatives a lot of hope that there is at least a base of 40 U.S. Senators that are thinking straight.

Chairman NORWOOD. My time is up, but I am coming back in the next round and ask that question.

Ms. MCCOLLUM OF MINNESOTA. You can ask it.

Chairman NORWOOD. Well, if you have no objections.

Ms. MCCOLLUM OF MINNESOTA. No.

Chairman NORWOOD. Mr. Yellig, how would you have voted on the Senate Bill?

Mr. YELLIG. I would have voted for the bill with the understanding and expectation that in conference, the bill would have been made better.

[Laughter and applause.]

Chairman NORWOOD. Mr. King, how would you have voted?

Mr. KING. Congressman, I would have voted a very clear no. I watched C-Span the day that the Senate voted on that, and I would hate to say the wrong name, but I watched one of the Senators minutes before the final vote be alerted by his staff members that there was a provision in 2611 that would require the United States government to consult with the government of Mexico before we secure our own border.

There are a myriad of reasons that I would not have voted for the bill, sir, but that would have done it right there.

Chairman NORWOOD. We cannot even build a fence on our own United States property under that bill, without getting Mexico to OK it. I think that is unbelievable.

Mr. KING. I am a clear no, Congressman.

Chairman NORWOOD. Mr. Wenger.

Dr. WENGER. I have not read the bill, so I—

Chairman NORWOOD. Do you know enough after today?

Dr. WENGER. No, I do not actually.

Chairman NORWOOD. Oh, you do not?

Dr. WENGER. My inclination is that I would have voted for it, but having not read all the specifics, I cannot say for certain.

Chairman NORWOOD. Your inclination is you would have.

Dr. WENGER. Yes, sir.

Mr. BLACK. Crystal clear, no.

Chairman NORWOOD. Senator.

Mr. PEARSON. No.

Chairman NORWOOD. Thank you for your indulgence. My time is now up. Ms. McCollum, you are now recognized.

Ms. MCCOLLUM OF MINNESOTA. Well, you know, we can come back after the election, but I think it was a total missed opportunity for the leadership—forgive me for stating what is fact—the leadership is not in the Democratic Party, we control nothing. For the leadership in the Republican Party not to take those bills and go to conference, we have wasted months. We should be in a conference setting and at least see if we could move forward.

[Applause.]

Ms. MCCOLLUM OF MINNESOTA. And as we are wasting time by not going to conference, we are missing an opportunity. The reason why there is not any enforcement, the number of apprehensions at the border has declined 31 percent since the year 2000. The num-

ber of apprehensions inside the country of illegals has declined 36 percent since the Bush Administration. The Bush Administration has cut personnel for work site immigration enforcement by 63 percent. The number of work site immigration enforcement fines against employers has fallen drastically. The number of work site immigration enforcement arrests have fallen drastically. And I have got the numbers all here, I will submit them.

Let me give you the numbers arrested in work site enforcement since 2000. 1999, 2849 arrests; 2003, 445. And the number of immigration fraud cases have completely fallen drastically under the Bush Administration. In 1999, we had 6455 fraud cases completed; 2003, 1398. Now if we do not have the wherewithal to put our money where our mouth is, when these budgets are moving forward, to put the dollars into coming up with a verification, to put the dollars in enforcement, we should all be held accountable for that, based on what we do with the budget.

It is all about choices. We are building bridges to nowhere, but we are not funding to secure our borders.

I would just ask any of the witnesses if they know of any place where we have increased funding to protect our borders, increased funding to help employers verify, increased funding under the majority control that we currently have in Washington, to protect American wages, jobs. Is anyone aware of any increases?

Chairman NORWOOD. Yes, I am.

Ms. MCCOLLUM OF MINNESOTA. What have we increased?

Chairman NORWOOD. In the appropriations bill, there was a considerable amount of increased funding for border patrol, homeland security measures for this particular immigration thing. And I have to tell you, and I do not want to go here very far, but most Democrats voted against it. Not you, I am sure, but most of them did.

Ms. MCCOLLUM OF MINNESOTA. But I am asking about what we are talking about, the onsite job investigations. Those have all been cut, unfortunately.

Thank you, Mr. Chairman.

Mr. KING. Ms. McCollum, I am familiar with the figures that you quoted, and if you are asking a member of the panel, a lot of people who pay attention realize that the last President who really went after interior enforcement as far as illegal immigration was Dwight Eisenhower. We are not entirely convinced that it is a matter of continually increasing funding more than it is to get people in Washington in elective office on the same page, to enforce existing law; and again, to hold people in this country illegally and their employers and their bankers up to the same rule of law that the American citizens are held to.

Ms. MCCOLLUM OF MINNESOTA. As long—if the Chair would indulge me for a second.

Chairman NORWOOD. Go ahead.

Ms. MCCOLLUM OF MINNESOTA. In the President's latest budget, the request for OSHA, that is job safety, work site, was cut 8 percent. It was a loss of 197 total positions. I mean when you are cutting that many positions, then you know you do not have people out on the work site being able to do the inspections. The number of wage and hour investigators dropped from 946 in 2000 to 788

in 2004, that is 200 fewer people out there able to do those job site investigations.

So we have a responsibility I think to go back and work together to increase these parts of the budget.

Mr. KING. May I, Ms. McCollum?

Chairman NORWOOD. I think I need to go to Dr. Price because he has a time schedule.

Dr. Price, you are recognized for 5 minutes, and then I will get you back.

Dr. PRICE. Thank you, Mr. Chairman, I appreciate that and I do have a time crunch and I apologize. I am going to have to leave after this series of questions.

But there are a couple of things that need to be pointed out. One, the reason that this bill has not gone to conference is because there has been no evidence shown by the other body that they are interested in negotiating on any of the provisions that they have. So it makes no sense to negotiate with one's self in this matter, especially when the kinds of security arrangements for control of the border that we in the House believe are so doggone important, would not be considered in the same vein.

To intimate that there have been no proposals to have more resources put into controlling the border or assisting in identifying illegals is just folly. To sit before a public group and say that this House has done nothing as it relates to that is simply wrong. It is again, the kind of demagoguery that we see and it does a disservice to the debate and it does not further a positive solution.

I just got back from visiting the border in El Paso this past week, and our border security folks are doing a whale of a job with the resources that they have. What we have not demonstrated in the Federal Government is the will to accomplish the task. And the task before us is to control the border. I think it is the No. 1 job, and it is the No. 1 job because the American people do not trust us to do the No. 2 job. That is the reason. And there is good evidence for that, as Congressman Deal stated.

I do want to take a few moments and talk very briefly with Dr. Wenger because I am troubled by some of the comments that you made in your written testimony. In your written testimony you state that this simple fact, talking about illegal workers on job sites, means that both sets of workers, both sets of workers, both legal and illegal, face the same threats in the form of job insecurity, wage insecurity and workplace insecurity. I am curious as to what kind of job security, wage security and workplace security you believe is due illegal workers in the United States.

Dr. WENGER. Illegal workers do not have standing, and they should not be protected by law. They are here illegally.

Dr. PRICE. I would agree with you, and I would encourage you to review your—

Chairman NORWOOD. You need a microphone, please. Greg, take care of the microphone.

Dr. WENGER. Workers who are here illegally have no legal standing and are not entitled to the rule of law.

Dr. PRICE. And I would—

Dr. WENGER. As a consequence, I would say though that they do create hardships, potential hardships, when they are unprotected, for American workers who are here legally, who work.

And I would also like to say about the wage issue that we have talked about in the past, I have heard that there is some research that indicates that wages have been dramatically declining as a result of this. Having read the literature, the academic literature, the peer-reviewed literature on this, I think that this is a complete overstatement about the impacts of immigration on wages. There is a lot of research out there on this, it is very mixed. The difference between what we observe for native American workers who face competition from immigrants is a mixed and murky bag of tricks. It is not clear. The most prestigious researcher on this issue, George Borjas, who is at Harvard University, has written a compendium of the literature and his estimates—and he is clearly no fan of illegal immigrants or much legal immigration for low educational status workers—indicates that depending on the era, the 1970's, the 1980's or the 1990's, you get very different effects of legal immigration impacts on workers in the United States.

So to say that this is not a mixed bag or a murky mess is really disingenuous.

Dr. PRICE. I appreciate your verbal testimony. I would——

Mr. KENT. Can I just answer——

Chairman NORWOOD. Speak to the Chair, please.

Dr. PRICE. I would ask you to revisit your written testimony because I think it connotes things that you may in fact not agree with.

Please, Mr. Kent.

Mr. KENT. Just a quick point, Congressman.

You do quote Dr. Borjas, who is an expert in the area, and he is pretty clear about what he says. And I will read you a quote that is in my written testimony, he is a Harvard professor of course, and he found by increasing the supply of labor, immigration between 1980 and 2000 cost native-born American men an average \$1700 more in annual wages by the year 2000—very clear.

Dr. WENGER. That directly contradicts what he wrote in his handbook of general economics chapter.

Chairman NORWOOD. Gentlemen, we do not do it that way.

Dr. PRICE. I appreciate those comments and my time has expired, Mr. Chairman. I appreciate you holding this hearing. Thank you for your leadership.

Chairman NORWOOD. Mr. Deal, you are now recognized for 5 minutes.

Mr. DEAL. Well, thank you, Mr. Chairman.

I want to set a tone here that may be a little different than we have set up to this point.

What we have all talked about, and the reason that so many people are here to hear what we have to say, is that this is a very contentious issue. It is not one that lends itself, quite frankly, to simplistic solutions. I want to say this on behalf of those guest workers that we have in our community here. By and large, they are hard workers; by and large, they are family oriented people. They are the kind of people that can make a difference if they return to their countries because they need to establish that kind of work ethic,

that kind of respect for the work and family that their countries need to bring them up in the world community.

Now, that having been said, the two differences that exist between the House bill and the Senate bill, if you want to narrow it all down, is that the House bill is an enforcement first, interior and border. It does not have the guest worker provisions, it does not have amnesty built into it.

Now I think all of us recognize that at some point, we have a shortage of workers in this country, and we will need to address the guest worker portion and that issue. The point we want to make on the House side is you cannot do that simultaneously. And let me tell you why. I do not think you can make a guest worker program effective and function if the border is still porous. Why? Because I think a guest worker program has to have some conditions attached to it, some conditions attached to the worker in terms of how long they can stay, et cetera. I think it should also have some conditions attached to the employer. Why would anybody want to come to a program that has a time limit fixed as to how long you can be here if you can continue to come across the border and work with no time limits and no restrictions? Common sense says you have to have security of the border as a pre-requisite to making a guest worker program work, in my opinion.

Now let me ask specifically this question: We have talked about the wage issue and whether or not it should be a mandated, legislatively fixed higher wage standard. One could very well argue that all that does is to assure that there will be more dollars earned in the United States shipped across our border to the home country of the worker. The problem that people feel in my community—I have alluded to the three big ones, healthcare, education and crime—those all have social costs that are affected immediately while you are present in our country.

For example, should an employer who has a guest worker have responsibility for their medical bills? You are saying well, we are just going to pay the employee more money. Do you presume that they are going to use that extra compensation to buy health insurance that they are not buying now? I do not think so. Who is going to pay for those health care costs? I would like to hear somebody say, how are we going to fix those social problems that are attached with any proposed new guest worker plan.

Mr. YELLIG. May I respond to that, sir?

Mr. DEAL. Sure.

Mr. YELLIG. I know for sure that if there was a provision in immigration reform legislation that mandated that employers of foreign guest workers must provide medical insurance, I can assure you that my clients would get behind that 175 percent. But I am afraid, speaking candidly, that you would get the same response that we get about requiring the payment of a prevailing wage rate, saying why should a temporary foreign guest worker be provided with medical insurance when American workers are not provided with that same protection.

Nevertheless, I think that the requirement is an appropriate one because it addresses the kind of problems that you have alluded to.

Mr. DEAL. But let me tell you the problem in practical terms here. Many of our employers already provide health insurance,



they offer it as they offer their American workers health insurance, and the foreign workers elect not to participate. And the reason why? Because they can show up at our emergency room and get all the free care they want and they do not necessarily have to use the same name that they used the day that they signed up to be employed.

Now you say that that is unfair competition with American workers? I want to tell you that the low wage American workers in this community and across this country, they cannot show up and use a false name. They cannot go somewhere else and disappear into the economy. Their house will be foreclosed on, their car will be foreclosed on. Those are sanctions that are not currently applied in the current system.

VOICE. Preach it, brother.

[Applause.]

Mr. DEAL. I have incited enough trouble, I will yield back my time.

Mr. YELLIG. Just for the record, organized labor I know would support a mandatory requirement that all employers provide medical insurance, not that is optional, but mandatory. I want to make sure that is clear. We would support that, again, 175 percent or more.

Chairman NORWOOD. I do not think there is any doubt amongst any of us that that is clear.

Ms. McCollum, you are now recognized for 5 minutes.

Ms. MCCOLLUM OF MINNESOTA. Thank you, Mr. Chair.

This has been a robust debate, and I am going to stress again, unfortunately, this debate is not taking place in a conference committee. The House says, you know, I am not going to do this unless—go to conference unless we guarantee we are going to get our position to win and the Senate says we want our position. That is what usually happens with all conference committees. We should be in conference committee, we should be working on this issue. We cannot afford to let our borders go unprotected.

[Applause.]

Ms. MCCOLLUM OF MINNESOTA. And it is clear that we need to put dollars back into the enforcement sections that are currently in law to protect workers that are here legally and to protect American workers.

But I think there is another discussion that has also been taking place, and I think it is helpful and that is should we have a benchmark, an expectation of what a person is to be paid, so that if—and I am using prevailing wage numbers which have not been updated in this county since 1990—if I am an asphalt raker, an American asphalt raker born here in the U.S.A. and I am raking asphalt, I know I am guaranteed \$7.51 an hour, if it is a Federal contract. Why should that American worker know that a guest worker or an illegal worker can come in here and take that job away from them at another site? That is wrong. And what the Senate Bill attempts to address and why I think it is important we go to conference committee—this is going on right now, folks, American workers are having to compete with people who are here illegally, who are not being paid the same wage for doing the job.

VOICE. Secure the border.

Ms. MCCOLLUM OF MINNESOTA. Mr. Chairman——

VOICE. Secure the border.

Ms. MCCOLLUM OF MINNESOTA [continuing]. Would you ask this gentleman——

VOICE. Have I got to leave?

Ms. MCCOLLUM OF MINNESOTA. No, you do not have to leave.

Chairman NORWOOD. We are not going to do it that way or you will have to leave. You have to be quiet in the audience. Sorry.

Ms. MCCOLLUM OF MINNESOTA. I have not once said we should not focus on securing the borders, but the fact of the matter is, without putting a benchmark in for wages to protect American workers, American workers will not have the opportunity to compete for jobs here at home. We need to have a benchmark for wages. This discussion with Bacon-Davis gives us the opportunity to make sure American workers, their jobs and their benefits are protected. And we have to do that.

And these are concluding remarks, so I know people have their hands up. Mr. Chair, you have been very gracious. Thank you for hold this hearing, and I hope that when we go back, we do not wait until a lame duck session to do something about securing our borders and protecting American workers.

Chairman NORWOOD. Thank you, Ms. McCollum, I appreciate your effort to be here, and I thank the witnesses a great deal for their time and their effort to be here and go through this.

In conclusion of our hearing today, I just want to point out that if all of my Democratic colleagues were as wise as Ms. McCollum, then we probably could solve this problem as soon as we get back. The different points that she brings out, I agree with in so many different ways, but I have to tell you that most Democrats in Washington do not want to do this, they voted against securing the border, 164 of them in the House voted against securing our border. In my district and in Mr. Deal's district, that number who agree that we should secure our borders first is somewhere between 88 and 90 percent. The American people catch on to what is going on with this and they know what they want us to do. But the reason we cannot get in conference is that Senator McCain and Senator Reid keep sending letters out to all members of the House saying we cannot possibly come to conference unless you pre-agree there can be no changes in the Senate Bill. Well, now that is pretty hard to have a conference committee under those circumstances.

Hopefully, after being home this month, working with our constituents around the United States, some Senators and some members of the House will come back to Washington having learned a few lessons from the people. If we will just listen to the people of the United States, the citizens of this country, there is a very clear message as to what we should do and how we should do it. This is not as hard as some people like to make it seem.

You have to secure the border. That is not that hard to do. At the same time, you have to start border patrol boot camps. You actually start training people to secure the border other than the National Guard. This is not the first time this thought has ever come up, ladies and gentlemen. In 1916, the Georgia National Guard went to the border in New Mexico, along with 100,000 other National Guard troops that were Federalized. Why did they go? To se-

cure the border of the United States from Poncho Vila. He had come across and killed 19 Americans in New Mexico.

Today, from illegal immigrants, we lose 25 American citizens a day from illegal immigrants and we still do nothing about it. That is either from DUIs or murder. That is going on right here, and you know what is going on in Hall County in terms of the criminal statistics.

As soon as we secure that border, which can be done, and I love my President, but he is wrong about this. He needs to send—

[Applause.]

Chairman NORWOOD. He needs to send the requisite number of National Guard down there now. They can do it within 6 weeks, ladies and gentlemen, if we will just make up our mind to do it. The President can send all the budgets he wants to to Congress, he does not get to write the budget, the House of Representatives gets to write the budget. And Ms. McCollum is correct, we have not done our job in the House of Representatives in terms of funding what needs to be done. When that border is secure, then you can go about the business of writing a guest worker program that actually does work, without giving illegal immigrants advantages over American citizens.

My son would pay more to go to the University of South Carolina—God forbid—

[Laughter.]

Chairman NORWOOD [continuing]. In tuition than would an illegal immigrant from Juarez. That makes no sense of any kind to me. Why should I be penalized and reward someone who has broken the law? All you have got to do is come across the border under the Senate Bill, you can become a citizen, you can bring all of your family, we are going to pick up about 20 million new immigrants in the next 20 years and Georgia is running out of water now. Are we not concerned about the population of 100 million new people in this country over the next century under this Senate Bill?

Are you concerned that they can get on Medicaid, Medicare, although Mexico has a Medicaid and Medicare too. I refer Hispanics I see to go to the Mexican Consulate, try their Medicaid program rather than our Medicaid program that can hardly fund itself any more. You can get earned income tax credits under the Senate Bill. Does anybody know the cost of this? Does anybody know the cost of the Social Security program that is known by all to be going broke? What kind of legislation did they put out over there? It is not the kind that will ever pass or see the light of day. I promise you, at least not with any of these votes here, and I am pretty sure they cannot get it done.

But we do need to go back and work out a guest worker program, we need to go back and work out a way to deal with the 20 million that are here. There is such a thing as a bullet-proof work card. You can make a card that is tamper proof. If we can go to the moon, we can make a card that is tamper proof. We need to encourage these people to turn themselves in to Ellis Island centers. Why would they do that? Because if they do not, under the new bill, they will be a felon. If they do not, the employer is going to pay \$50,000 per. That is why they will turn themselves in. If they are not a terrorist, if they are not a drug dealer, then come on and turn

yourself in and we will do a health check and we will check your background and we will let you stay for two or three more years. And then go home like everybody else and get in line, like all the other people from around the world that are trying to come to this great country.

We all understand why everybody wants to come here. But immigration should be about what is right for the American citizen first and what is right for America, not what is right for people from all around the world. No other country in the world has immigration laws the way we do. All we really have to do is pass the same immigration laws Mexico has, that will stop it, I promise you, dead in its tracks.

[Applause.]

Chairman NORWOOD. Thank you for your patience and your tolerance. If there is no further business, then this Subcommittee stands adjourned.

[Whereupon, the Subcommittee was adjourned at 1:15 p.m.]

[Additional materials submitted for the record follow:]

[Mr. Owens submitted the following statements and articles:]

**Prepared Statement of Ross Eisenbrey and Monique Morrissey, Economic Policy Institute**

A key issue of evolving immigration policy in the United States is whether employers should be able to hire temporary or “guest” workers from other countries when workers are scarce and wages are rising. Though popular with employers, guest worker programs are generally opposed by labor unions and others who say these programs risk displacing U.S. workers or pushing down their wages.

The immigration bill passed on a bipartisan basis by the U.S. Senate—the McCain-Kennedy bill, or S. 2611—tries to balance these competing concerns by requiring employers who want to recruit temporary guest workers in the construction and service industries to first offer the jobs, at the prevailing industry wage, to U.S. workers. If no qualified U.S. workers apply for the jobs, employers can hire guest workers but must pay them the prevailing wage.

In a report issued in July 2006, the Senate Republican Policy Committee (RPC) attacked the prevailing wage provision in the McCain-Kennedy bill, as “unfair to U.S. workers” because it would “guarantee wages to some foreign workers that could be higher than those paid to American workers at the same worksite” (RPC 2006). This claim is false, since the law requires employers to first offer each job, at the prevailing wage, to any qualified U.S. worker who applies.

The RPC (chaired by Sen. Jon Kyl (R-Ariz.), co-sponsor of a rival immigration bill) also claims that prevailing wage measures are inflated. In fact, the same government studies cited by the RPC show these measures to be accurate. But even if this claim were true, it would strengthen, not weaken, the argument for including such wage protections in an immigration bill since they ensure that guest workers are only hired in tight labor markets when wages are rising.

Finally, the RPC claims that the law expands the reach of the Davis-Bacon Act, which requires construction companies with federal contracts to pay employees the prevailing wage. But the McCain-Kennedy bill specifies only that the wage employers offer to construction workers must be the prevailing wage, as measured under the Davis-Bacon Act, and none of Davis-Bacon’s wage reporting or enforcement provisions is applied to guest workers.

*Should Immigration Reform Include Prevailing Wage Protections?*

The rationale for expanding guest worker programs is to increase the supply of workers during labor shortages. Most economists would dispute the notion of a labor shortage in the case of low-skilled workers, since employers can always find workers to fill these jobs if they offer high enough wages. However, if we understand “labor shortage” to mean a tight labor market, then, at a minimum, guest worker visas should be granted only when the market is demonstrably tight, i.e., when wages are rising.

This is the purpose of the prevailing wage provision in S. 2611, as well as similar provisions in earlier guest worker laws. They require employers who want to hire guest workers to pay the prevailing wage, defined as the wage paid to the majority

of workers in a particular job category and local labor market, or, barring that, the average wage paid to these workers. Prevailing wages are based on periodic surveys of employers and third parties, and so they always lag in time behind current wages.

Requiring employers who want to hire guest workers to pay the prevailing wage serves two purposes. First, it ensures that employers do not hire guest workers when wages are falling because, if they did, they would have to pay them the higher previous year's wage (recall that the prevailing wage is measured with a lag). Second, it ensures that employers do not undercut the market wage by hiring foreigners willing to work for less than U.S. workers.

The prevailing wage language is the only assurance in the McCain-Kennedy bill that guest workers will be recruited only when labor markets are tight, as intended. This protection is somewhat weakened by the fact that the law still allows employers to hire guest workers when nominal wages are stagnant or rising but real (inflation-adjusted) wages are falling. However, lowering or abolishing prevailing wage measures would only make the situation worse.

*Is the Prevailing Wage Provision Unfair to U.S. Workers?*

The RPC claims that the prevailing wage provision "would guarantee wages to some foreign workers that could be higher than those paid to American workers at the same worksite." This argument implies that some employers would be willing to hire guest workers even if they had to pay them more than their other workers (an expense that would be worth it, perhaps, because guest workers' vulnerability might make them more compliant employees).

Even if this were true, S. 2611 requires that employers first offer the jobs, at the prevailing wage, to U.S. workers. Thus, the scenario envisioned by the RPC could only occur if employers were breaking the law or if U.S. workers were somehow unwilling to apply for higher-paying jobs. Because the RPC ignores the fact that McCain-Kennedy requires employers to first offer the jobs to U.S. workers, it does not specify whether it believes employers to be lawbreakers or U.S. workers to be oblivious to their own well-being.

It should be noted that building trade unions, which have experience with similar language in previous immigration laws, support the prevailing wage provision, while the U.S. Chamber of Commerce, an employer group, opposes it.

*Are Prevailing Wage Measures Biased and Inaccurate?*

The RPC claims that "Davis-Bacon wages tend to be inflated because of the bias caused by the wage-setting process that relies solely on voluntary wage data reporting."

The RPC does not explain the source of this supposed bias, except to say that "there is no incentive (and perhaps there is a disincentive) for private sector employers to provide wage information that may aid their competitors." The RPC seems to imply that low-wage employers will not participate in the survey because they do not want their employees recruited by competitors offering higher wages. The problem with this theory is that all company-specific wage data collected by the Department of Labor are confidential.

Another possibility is alluded to in a later paragraph: "Bias is inherent since the DBA (Davis-Bacon Act) relies only on information volunteered by employers and third parties, some of whom could have an interest in influencing the outcome of the prevailing wage determinations." Again, the RPC does not explain what would motivate an employer or third party to withhold information from the survey.

In fact, both high-wage and low-wage employers have an incentive to participate in prevailing wage surveys. High-wage employers, unions, and these employers' business associations participate in an effort to keep the prevailing wage high and prevent low-wage competitors from undercutting them on federal contracts or from hiring guest workers. Low-wage employers, on the other hand, participate in an effort to keep the prevailing wage low so they do not have to raise wages when bidding on federal contracts or recruiting guest workers. Competitive pressures therefore encourage participation by all employers and promote accuracy.

The fact that all employers are motivated to participate in prevailing wage surveys is enhanced by the fact that construction labor markets are highly competitive, so that wages for, say, drywall finishers do not typically vary much between employers (though there can be differences between union and non-union contractors). Thus, it is not surprising that a 1999 General Accounting Office report cited by the RPC found that errors averaged only 76 cents per hour (GAO 1999). These errors generally fall within the statistical margin of error used in Bureau of Labor Statistics surveys (Lipnic 2004).

*Does It Matter If Prevailing Wage Measures Are Too High?*

It is important to note that even if prevailing wage measures are slightly inflated, as the RPC claims, this would actually improve wage protections for U.S. workers, who must first be offered jobs at the prevailing wage before an employer seeks to recruit guest workers. Because the prevailing wage is measured with a lag, this also ensures that the local labor market is tight and wages are rising before guest workers are brought in, in keeping with the intent of the law.

*Do Other Measures Better Capture the Prevailing Wage?*

The RPC does not say whether it supports wage protections in any form. However, it repeatedly contrasts what it calls “biased” prevailing wage determinations under the Davis-Bacon Act with “statistically valid” wage data from the Occupational Employment Statistics (OES) survey. In fact, both wage measures are similar in relying on voluntary surveys conducted by the Department of Labor.

The RPC’s focus on the OES survey is misguided and misleading, since the OES survey does not gather information on benefits and therefore cannot be used to construct prevailing wage measures. Other factors that make the OES survey an inappropriate source for prevailing wage determinations include differences in geographic scope (prevailing wages are reported at the county level, whereas the OES provides only national, state, and metropolitan area wage data) and occupational categories (prevailing wage measures include more occupational classifications as well as breakdowns by construction type).

Even if such obstacles could be overcome, however, it is not clear why the RPC prefers OES data, unless the hope is that the OES survey, even if expanded to include information from other surveys on vacation, health, retirement, and other benefits, would tend to underreport wages and benefits. The Department of Labor’s Wage and Hour Division, which is responsible for issuing the Davis-Bacon prevailing wage determination, currently surveys unions and business associations to ensure the accuracy of wages and benefits covered under collective bargaining agreements.

The only real problem with wage data from the Department of Labor—not just prevailing wage data, but also OES survey data—is that it is often out of date. In both cases, wage measures can be based on surveys conducted as many as three years earlier (BLS 2004; OIG 2004). Though the RPC expresses concern with the timeliness of prevailing wage determinations, it does not call for an increase in the DOL’s budget in order to increase the frequency of these surveys, perhaps because increasing the frequency of surveys would generally raise prevailing wage measures, not lower them.

*Is There a Labor Shortage in the Construction Industry?*

Despite a recent building boom, construction wages have been rising slowly in nominal terms and actually falling in real terms (Figure A), a situation that is not consistent with a labor shortage or a tight labor market.

However, because wages are still nominally rising, prevailing wage measures are somewhat lower than the actual market wage, since they are measured with a lag. This means that, under the prevailing wage provision of S. 2611, employers could recruit guest workers at or below the real market wage, even though the labor market is stagnant. This effect would be countered if wage measures were slightly inflated, as the RPC claims. In other words, given a survey lag, there is a strong argument for requiring employers to pay above the prevailing wage. Thus, if the RPC claim is true, so much the better, for slightly inflated guest worker wages would help ensure that guest workers do not displace U.S. workers or undercut their wages.

*Is McCain-Kennedy an Unwarranted Expansion of the Davis-Bacon Act?*

The RPC’s focus on the supposed expansion of the Davis-Bacon Act to the private sector appears to be an attempt to galvanize members of the business community who oppose the Davis-Bacon Act, and does not add any substantive points to its argument. Nor is there anything novel or precedent-setting about the prevailing wage provision of S. 2611; it is similar to provisions in earlier guest worker laws, going at least as far back as the Bracero program of 1942-1964.

*Conclusion*

The RPC has attacked the prevailing wage protections in the Senate’s comprehensive immigration bill as “unfair to U.S. workers,” but just the opposite is true. In fact, by making it more difficult for employers to qualify for temporary foreign guest workers, the prevailing wage provision protects U.S. workers from employers who would otherwise replace them with foreign workers willing to work at a lower wage.

Without the provision, the guest worker program would truly be unfair to U.S. workers.

Experience with foreign guest worker programs over the last half century tells us that many employers prefer to hire foreign workers rather than U.S. residents, even when there are many qualified U.S. workers available. The reason is obvious: foreign workers can almost always be found who are willing to work for lower wages, for longer hours, and in worse conditions than U.S. workers. They are, therefore, less expensive to employ. Given the opportunity, many employers would seek visas for guest workers rather than offer work to U.S. residents, especially since temporary guest workers' reliance on employers for visas makes them highly dependent on employers, even more so than immigrants who are legal permanent residents.

If Congress goes along with President Bush and the U.S. Chamber of Commerce and creates a large guest worker program—potentially bringing hundreds of thousands of temporary foreign workers to the U.S. for employment—then mechanisms must be created to ensure that U.S. workers are not displaced and that employers do not pay wages so low as to undercut the market wage for U.S. workers. That is the purpose of the Senate immigration bill's prevailing wage requirement.

Business groups oppose the prevailing wage requirement for obvious reasons: they want foreign guest workers at the cheapest possible wage. Their public position, however, is not that the provision is unfair to employers, but rather that it is unfair to U.S. employees because it will lead to foreign guest workers being paid more than U.S. residents. This claim is demonstrably untrue.

The prevailing wage provision in the McCain-Kennedy bill, like similar provisions in earlier guest worker laws, is designed to prevent employers from recruiting guest workers willing to work for a wage that will adversely affect the living standards and wages of American workers. It also helps to ensure that guest workers are hired only when labor markets are tight, though it does so imperfectly since prevailing wage measures are always out of date. The prevailing wage provision of S. 2611 is thus a minimum, but necessary, standard.

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[From the Lincoln Journal Star (Nebraska), August 8, 2006]

### **Hagel Laments Immigration Inaction**

By ART HOVEY

*House members are using the issue to 'polarize voters' before the November election, senator says.*

OMAHA—Maybe the students can do a better job.

As Nebraska Sen. Chuck Hagel vented his frustrations Monday with the failure of Congress to pass immigration reform so far this year, an audience of high school teachers had to be thinking about a coming Capitol Forum on America's Future in Lincoln in March.

That's when their junior and senior students will gather at an event sponsored by the Nebraska Humanities Council to try to come up with immigration answers that Hagel and his peers can't agree on.

Hagel called it "a tragedy" that the House and Senate have been unable to settle on a plan for dealing with an estimated 12 million people who are in the United States illegally, mostly from Mexico and other countries south of the border.

Hagel, a leading advocate of a Senate approach that would give some of those people a path to citizenship, criticized House counterparts who decided to hold a series of 21 immigration hearings across the United States during a summer recess.

It's "complete folly, silly" to do that, he said, for purposes other than crafting legislation. With no immigration bill in the formative stage, he later told teachers, "what they're doing is using this to polarize voters" before the November election.

Monday's question-and-answer session in Omaha will help teachers Trent Goldsmith of Utica-based Centennial, Roy Ferris of Valentine and others plan their annual approach to student problem solving.

The next school year's range of thorny issues, said teacher team leader Robin Kratina of Bellevue West, also includes nuclear proliferation, terrorism, global trade and global environmental challenges.

"What is the fear of this bill?" Goldsmith asked Hagel at one point in a 45-minute dialogue on immigration.

"It's an irrational fear," Hagel responded.

He pointed out, for example, that there's no reason to worry about immigrants taking jobs away from Americans when unemployment is comparatively low.

"So the whole idea about immigrants taking American jobs is not true," he said. "It just doesn't work."

Cast out millions of workers at a time of low unemployment, he said, and "you would bring much of the economy to its knees."

Ferris wanted to know what he should tell students when they ask him why current immigration laws are not being enforced.

The truth, Hagel said, is that stopping illegal border crossings needs attention on both sides of the Mexico border.

"A lot of this responsibility rests with the Mexican government, and we really have no control over it," he said.

Meanwhile, the U.S. commitment to securing the border "has changed a lot over the last two years" and will become even more rigorous.

Although he's not hopeful of meaningful compromise on immigration reform when lawmakers return to their desks after Labor Day, Hagel said the House's summer hearings should not be the center of attention.

"Where the focus should be is on the conference committee to resolve differences between the two."

House language did not address what many critics of the Senate approach have portrayed as amnesty. It emphasized securing the border and enforcing existing immigration law.

But Hagel said the Senate bill should not be regarded as soft on enforcement. "More than half the bill was about enforcement," he said. "The Senate bill actually does more for enforcement than the House bill."

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[From the Omaha World-Herald (Nebraska), August 8, 2006]

### **Hagel: Immigration Compromise Probably Stalled for the Year; the Senator Calls House Leaders' Public Hearings on the Issue "Complete Folly"**

By CINDY GONZALEZ, World-Herald Staff Writer

It's unlikely that Americans will see comprehensive immigration legislation approved by Congress this year, Sen. Chuck Hagel said Monday.

"That is a tragedy," Hagel said. "We need to fix the problem."

The Nebraska Republican helped craft the Senate immigration bill. It includes a path to legalization for many of the 12 million illegal immigrants already in the country, a guest worker program and stricter border enforcement.

But the U.S. House approved an enforcement-focused bill, and lawmakers have yet to work out differences between the two measures.

Speaking to an Omaha audience of about 30 teachers whose classes touch on immigration, Hagel on Monday described as "complete folly" the public hearings on immigration that House leaders have decided to hold across the country this summer.

After each chamber passed its immigration proposal, the next order of business should have been a House-Senate conference committee where a compromise could be worked out, Hagel said.

But the process has stalled, and time is running out for the current session of Congress.

Hagel said the delay in finding a compromise has further polarized people on both sides of the debate. One side wants a path to citizenship for illegal immigrants already in the country; the other calls that "amnesty" and prefers only increased border and workplace enforcement.

Effective immigration legislation must include a solution for many of the 12 million illegal immigrants already in the United States, Hagel said. He said Americans' "irrational fear" of losing jobs is partly to blame for opposition to such provisions.



Even if the country could round up and deport all illegal immigrants, Hagel said, “you’d bring much of the American economy to its knees.”

Hagel said low job approval ratings reflect public frustration with the inability of President Bush and Congress to achieve solutions on issues such as immigration. “The American people have had it with all of us,” he said.

There is a “built-in selfcorrection process” called an election, Hagel said. He said an upshot could be a lot of new faces in public office after the November elections.

Hagel was featured speaker at the downtown Omaha event co-sponsored by the Nebraska Humanities Council. Participating teachers from across the state will prepare students for the annual Nebraska Capitol Forum on America’s Future.

Immigration will be one of the key topics for students to debate at this year’s spring forum. Their recommendations will be reported to Congress.

Roy Ferris, a teacher from Valentine, Neb., asked Hagel how he would respond to his students’ most common immigration-related questions: Why aren’t current laws being enforced? What is the role of the Mexican government? And what changes might come from the new Mexican president’s administration?

Hagel said the Mexican government has failed in its responsibility to curb illegal emigration.

Although Hagel said the United States has “not done enough” to stop illegal immigration, he said about \$9 billion was newly appropriated this year for more Border Patrol agents and other security measures.

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[From AFX News Limited, August 10, 2006]

### **Study: Immigrants Not Hurting U.S. Jobs**

WASHINGTON (AFX)—Big increases in immigration since 1990 have not hurt employment prospects for American workers, says a study released Thursday.

The report comes as Congress and much of the nation are debating immigration policy, a big issue in this fall’s midterm congressional elections.

The Pew Hispanic Center found no evidence that increases in immigration led to higher unemployment among Americans, said Rakesh Kochhar, who authored the study.

Kochhar said other factors, such as economic growth, played a larger role than immigration in setting the job market for Americans.

The study, however, did not look at whether wages were affected by immigration. Advocates for tighter immigration policies argue that immigrant workers depress wages for American workers, especially those with few skills and little education.

Immigration supporters argue that foreign workers often take jobs that Americans don’t want and won’t take.

The Pew Hispanic Center is a nonpartisan research organization that does not advocate policy positions. The center studied census data on the increase in immigrants from 1990 to 2000, and from 2000 to 2004, for each state. It matched those figures with state employment rates, unemployment rates and participation in the labor force among native-born Americans.

The U.S. had 28 million immigrants—legal and illegal—age 16 and older in 2000, an increase of 61 percent from 1990. By 2004, there were 32 million.

Among the study’s findings:

- Twenty-two states had immigration levels above the national average from 1990 to 2000. Among them, 14 had employment rates for native-born workers above the national average in 2000, and eight had employment rates below the national average.

- Twenty-eight states and the District of Columbia had immigration levels below the national average from 1990 to 2000. Among them, 16 had above average employment rates for native-born workers in 2000, and 13 had below average employment rates.

- Twenty-four states had immigration levels above the national average from 2000 to 2004. Among them, 13 states had employment rates for native-born Americans above the national average in 2004, and 11 had employment rates below the national average.

- Twenty-six states and the District of Columbia had immigration levels below the national average from 2000 to 2004. Among them, 12 had employment rates for native-born Americans above the national average, and 15 had employment rates below the national average.

Immigrants tend to be younger and have less education than American workers. The study, however, found “no apparent relationship between the growth of foreign workers with less education and the employment outcome of native workers with the same low level of education.”

However, Steven Camarota, director of research for the Center for Immigration Studies, said his research shows that many young workers with little education are hurt by competition from immigrants.

"Employment for less educated natives has declined, and their wages have declined," said Camarota, who advocates stricter immigration policies. "There is no shortage of less educated workers in the United States."

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**Guest Worker Bill Introduced by Georgia Senator Saxby Chambliss in the 109th Congress**

The Agricultural Employment and Workforce Protection Act of 2005 (S. 2087), introduced by Senator Chambliss (R-GA), would reform the H-2A program. It would work and would broaden the definition of agricultural labor or services for purposes of the H-2A visa to cover labor or services relating to such activities as dairy, forestry, landscaping, and meat processing. S. 2087 proposes to streamline the process of importing H-2A workers. A prospective H-2A employer would file a petition with DHS containing certain attestations. Among them, the employer would have to attest that the employer will provide workers with required benefits, wages, and working conditions; that the employer has made efforts to recruit U.S. workers; and that the employer will offer the job to any equally qualified, available U.S. worker who applies. Unless the petition is incomplete or obviously inaccurate, DHS would have to approve or deny the petition not later than seven days after the filing date.

S. 2087 would change current H-2A requirements regarding minimum benefits, wages, and working conditions. Under S. 2087, H-2A employers would have to pay workers the higher of the prevailing wage rate or the applicable state minimum wage; employers would not be subject to the adverse effect wage rate (discussed above). Employers could provide housing allowances, in lieu of housing, to their workers if the governor of the relevant state certifies that adequate housing is available. Under S. 2087, an H-2a workers would be admitted for an initial period of employment of 11 months. The workers's stay could be extended for up to two consecutive contract periods.

S. 2087 would establish subcategories of H-2A non-immigrants. It would define a "Level II H-2A worker" as a nonimmigrant who has been employed as an H-2A worker for at least three years and works in a supervisory capacity. The bill would make provision for less than five years, to file an application for an employment-based adjustment of status for that worker. Such a Level II H-2A worker could continue to be employed in such status until his or her application was adjudicated. Under the bill, an "H-2AA worker" would be defined as an H-2A worker who participates in the cross-border worker program the bill would establish. These H-2AA workers would be allowed to enter and exit the United States each work day in accordance with DHS regulations.

In addition, the bill would establish a blue card program through which the Secretary of DHS could confer "blue card status" upon an alien, including an unauthorized alien, who has performed at least 1,600 hours of agricultural employment for an employer in the United States in 2005 and meets other requirements. An alien may be granted blue card status for a period of up to two years, at the end of which the alien would have to return to his country.

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[The prepared statement of the Associated Builders and Contractors follows:]

**Prepared Statement of the Associated Builders and Contractors (ABC)**

Associated Builders and Contractors (ABC) appreciates the opportunity to submit the following statement for the official record. We would like to thank Chairman Norwood, Ranking Member Owens and members of the House Subcommittee on Workforce Protections for holding today's hearing on "Guest Worker Programs: Impact on the American Workers and their Wages."

ABC is a national trade association representing more than 23,000 merit shop contractors, subcontractors, materials suppliers and construction-related firms within a network of 79 chapters throughout the United States and Guam. Our diverse membership is bound by a shared commitment to the construction industry's merit shop philosophy. This philosophy is based upon the principles of full and open competition unfettered by the government, nondiscrimination with regard to labor affiliation, and the award of construction contracts to the lowest responsible bidder

through open and competitive bidding. This process assures that taxpayers and consumers receive the most for their construction dollar.

The construction industry is a vital part of the American economy. According to the U.S. Census Bureau, construction growth significantly outpaced national gross domestic productivity growth over the last 12 years, increasing 137 percent while the Gross Domestic Product (GDP) increased about 88 percent in the same period. Today, the annual value of construction is worth more than \$1.16 trillion, representing more than 9 percent of the national GDP.

Of the nation's 5.6 million employer firms, more than 12 percent are construction firms, according to the U.S. Small Business Administration. Over the past 12 years construction continues to outpace the nation's other industry sectors in employment growth. In 1993, construction firms employed 4,779,000 people and today, the industry employs 7,227,000. The growth of 2,498,000 represents a 52.27 percent increase, based on numbers from the Bureau of Labor Statistics (BLS). The construction employment increase far outpaces overall U.S. employment growth, which was only 20 percent during the same period.

However, construction growth is not projected to slow. The BLS reports that another 792,000 new construction jobs will be created between 2004 and 2014. Therefore, ABC's member companies continue facing an ever-growing worker shortage problem. Despite, ABC's continued efforts promoting workforce recruitment, education and training in the construction industry through school-to-work programs, college and university outreach, professional development of training staff and the building of a strong chapter delivery system, the industry still faces difficulty in filling jobs. Combined with an aging domestic workforce and historically low American birthrates, the construction industry's future labor needs are especially acute unless additional labor sources are identified. An industry of this size demands significant human resources both now and in the future.

While today's hearing specifically focuses on guest worker programs and the impact on American's wages, ABC has remained steadfast in its belief that this is one element in a comprehensive approach required to effectively reform our immigration policies. Any successful immigration reform measure must work to ensure the enforcement of our laws, the security of our borders, interior enforcement and the prosperity of our economy.

As one of the nation's largest employers, the construction industry needs to be able to employ foreign workers when it is unable to find U.S. workers to fill jobs. Yet, the current immigration system today does not provide sufficient opportunity for workers to enter the country legally. While some have suggested relying on H-2B visas, bureaucratic red tape combined with limited availability of H-2B visas render that option unavailable. Furthermore, in most cases that category is not an option for ABC member firms as it is only useful to those employers with seasonal or one-time occurrence needs. The construction industry works year-round and employees must attend many job training and safety courses before setting foot on a jobsite. While some employees can learn their job in a few days, the skills required for many of the construction trades often take years to learn and are usually taught through a combination of classroom instruction and on-the-job training. It is vital to the industry that any guest worker program takes into account both the length of time which may be required to properly train our employees and that a project may not necessarily be completed within a few years.

While ABC is very supportive of a guest worker program, we are troubled by a Senate bill provision that would greatly expand the Davis-Bacon Act (DBA) (40 U.S.C. §3141 et seq.). Specifically, the provision would require DBA prevailing wage rates for guest workers employed on private construction projects, despite well documented problems with the DBA wage determination process. Currently, the DBA only applies to federal construction projects and some federally supported projects. According to the U.S. Census Bureau the vast majority of construction work in the United States is done privately and includes most homebuilding. Already, any foreign workers currently in construction are covered by prevailing wage protections under the U.S. Department of Labor (DOL) foreign labor certification regulations, and a citation to the flawed and fraud-prone DBA wage determinations is ineffective. Thus, the bill would greatly expand reliance on the flawed Davis-Bacon wage surveys.

The DBA requires federal contractors and their subcontractors working on contracts for construction, alteration, and/or repair in excess of \$2000 to pay employees the local prevailing wage rates and benefits for each class of worker. Over the years, the DBA requirements have been extended to other laws which provide federal assistance for construction through grants, bans, loan guarantees and insurance. These are known as Davis-Bacon Related Acts (DBRAs). Some estimate that the DBA and DBRAs covers as much as 25 percent of the nation's construction work,

according to the Office of Management and Budget, Prevailing Wage Determination Program Assessment.

The DBA requires the Secretary of Labor to determine the prevailing wage rate for each locality. Under current regulations, DOL's Wage and Hour Division sets the wage for each class of worker in each locality by conducting its own voluntary wage surveys of contractors and other interested parties.

By the Wage and Hour Division's own admission in its Prevailing Wage Resource Book, the accuracy of its wage determinations is completely dependent upon identifying the correct interested party and successfully securing their participation. Not surprisingly, there have been consistent problems with the accuracy of the DBA wage determinations.

In fact, a series of audits by outside agencies as well as the DOL's own Office of Inspector General (OIG) have revealed substantial inaccuracies in Davis-Bacon wage determinations and suggested that they are vulnerable to fraud. The Government Accountability Office (GAO) has issued multiple reports dating from the late 1970s to the late 1990s detailing problems with the determinations. In addition, DOL's OIG released three reports highly critical of the wage determination program.

In an effort to address these concerns, the Wage and Hour Division made some modifications to the wage determination program in the late 1990s and early this century. These modifications, however, have resulted in little improvement. In 2004, the OIG released a report stating that the \$22 million the Wage and Hour

Division spent to modify the program had yielded limited improvement and that the problems with inaccuracies identified in past reports remain. In fact, the OIG found one or more errors in 100 percent of the wage surveys they reviewed. It also concluded that because response to the survey is voluntary, employers and third parties with a stake in the outcome of wage determinations are more likely to participate. As a result of GAO and OIG audits and its own research, OMB concluded in a 2003 assessment report that the DB wage determination program is not performing.

Despite the DBA's inclusion in the Senate immigration measure, ABC applauds the Senate's efforts which have resulted in a comprehensive immigration reform bill that includes the need for a guest worker program and to deal with the nation's undocumented workers. To address the concerns created by the ongoing influx of undocumented workers, and to keep our nation's economy growing, Congress must deal with the need for a guest worker program that can serve as a legal vehicle to help meet our economy's labor demands.

Again, thank you for your commitment and leadership on this essential issue. ABC looks forward to working with your committee to ensure comprehensive immigration reform is reached.

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[The prepared statement of Bruce Goldstein follows:]

**Prepared Statement of Bruce Goldstein, Executive Director, Farmworker Justice**

Mr. Chairman and Members: Thank you for the opportunity to submit this testimony regarding the important issues of labor and immigration that are under consideration by this Subcommittee. There is an immigration crisis in agriculture, where the majority of farmworkers in the fields are unauthorized workers. Farmworker Justice, a national advocacy organization for migrant and seasonal farmworkers, believes that the solution to this crisis is comprehensive immigration reform that includes an opportunity for undocumented workers to earn permanent legal immigration status. The opportunity for undocumented workers to earn legal immigration status will help create a stable supply of farm labor in the United States, guaranteeing our food security. Deporting the large number of undocumented farmworkers is not feasible and would harm our agricultural production. We must offer unauthorized immigrants the opportunity to come forward out of the shadows and end the massive underground system of employment in this country.

We reject proposals to create harsh, large-scale guestworker programs based on temporary work visas because such programs subject both U.S. workers and foreign guestworkers to low wage rates, substandard working conditions, and little hope of government oversight protection. Guestworker programs impose a restricted non-migrant status that deprives participants of America's fundamental economic and political freedoms. All workers suffer when a segment of the labor force lacks basic freedoms. To the extent that guestworker programs are used, they must be designed to prevent adverse effects to U.S. workers' jobs, wages and working conditions and to minimize exploitation of vulnerable foreign workers. Such programs should include job standards that truly prevent adverse effects to U.S. workers' prevailing wage levels and benefits and minimize exploitation of vulnerable guestworkers as well as vigorous labor law enforcement to prevent job displacement and wage depression where guestworkers are hired. This letter will focus on the issue of wage protections in guestworker programs.

Guestworker programs can facilitate the hiring of large numbers of temporary foreign workers whose desperation for jobs, low cost of living in their home countries, and restricted status in the U.S. cause them to accept wages and working conditions far below U.S. standards. The presence of guestworkers in the labor supply can therefore lead to wage depression and other negative effects on U.S. workers, including displacement from jobs. Recognizing these risks long ago, Congress included a "prevailing wage" requirement in the Bracero guestworker program, which operated as an agreement between the U.S. and Mexico from 1942 to 1964. The Bracero program became notorious for abuse in part because the "prevailing wage" standard was not sufficient to stop wage depression among U.S. workers in the occupations where Braceros were hired. Wages in areas and jobs where Braceros worked stagnated at a time when other wage rates were increasing. The Government responded by revising the Bracero program's wage protections to achieve the statutory language that has been in most guestworker legislation: the hiring of guestworkers

shall not “adversely affect” the wages and working conditions of similarly employed U.S. workers. The “adverse effect wage rate” became part of the Bracero program and what later became the H-2A agricultural guestworker program (which began during World War II and continued after the Bracero program ended). Different formulas have been used to set the wage rate at levels that do not allow wage depression.

This letter explains why a “prevailing wage” standard is necessary but not adequate by itself and why the “adverse effect wage rate” under the H-2A program is too low to achieve the statutory goal of preventing the presence of foreign workers from adversely affecting the wage rates of U.S. farmworkers. The AEWR formula is based on annual surveys of agricultural employers’ wages paid to non-supervisory farm and ranch workers and is therefore market-based. Nonetheless, the current methodology for determining the wage rates in the H-2A program is not adequate because it does not prevent the hiring of guestworkers and undocumented workers from depressing the wage rates of U.S. workers and the farm labor market generally. Any future guestworker program should recognize these facts.

#### *The H-2A Program Wage Requirements*

Under the H-2A program (8 U.S.C. § 1101(a)(15)(H)(ii)a and §1188), the Department of Labor has issued regulations (20 CFR §§655.90-655.112) establishing the minimum required wages and benefits (see 20 CFR §655.102(b)). The regulations (§655.102(b)(9)) require employers to pay the highest of three minimum wages:

- the federal or state minimum wage;
- the local “prevailing wage,” as determined by the Department of Labor using state agency wage surveys for each crop in the local area. It is expressed in the prevailing method of payment (for example, a piece rate or an hourly wage rate). The prevailing wage rate methodology is the local median wage for that particular job (half the workers make less and half the workers make more), except where there is a single wage rate that is paid to 40% or more of workers in that crop and in that local geographic area (in which case that rate is the prevailing wage). In some instances, the prevailing wage rate may be a piece rate that has not changed in many years and may yield earnings that are below legal minimum hourly wage for most workers.
- the H-2A “adverse effect wage rate or “AEWR.” The AEWR is the regional weighted average hourly wage rate for nonsupervisory field and livestock workers combined. 20 CFR §655.107. It is determined by the Department of Agriculture’s annual Farm Labor Survey of employers’ reported wage rates to non-supervisory farm and ranch workers. Most regions include more than one state. Each year, the Department of Labor (DOL) issues the USDA survey rates as the H-2A program adverse effect wage rate for each state. The AEWRs for each year (e.g. 2006) are based on the average wages paid during the prior year (e.g. 2005).

#### *Origins of the Adverse Effect Wage Rate Adjustment to the Prevailing Wage*

The Bracero guestworker program, as bad as it was, nonetheless required agricultural employers to pay at least the “prevailing wage” to prevent the importation of guestworkers from negatively affecting the wages of U.S. agricultural workers. The AEWR was established, after years of debate, near the end of the Bracero program (which ended in 1964), and was applied to the H-2A program. The AEWR’s purpose was to overcome the depression in “prevailing wage” rates caused by the presence of foreign workers (whether guestworkers or undocumented workers) from poorer countries who will generally accept lower pay to obtain U.S. jobs.

The President’s Commission on Migratory Labor (1951, at p. 133), for example, said: “\* \* \* the regions in which farm wages are well below the national average \* \* \* are those regions containing the States in which the major portion of the post-war foreign labor contracting has entered. Florida has been the principal user of British West Indian contract labor and Texas has been the principal user of Mexican contract labor. Both States have wage rates much below the national average.”

The AEWR was intended as an approximate measure to compensate for the wage depression caused by the hiring of guestworkers. The methodology has varied over the years. The expression of the AEWR as an hourly rate where the prevailing wage is a piece rate also offers farmworkers protection against abuses associated with piece rates.

The AEWRs are almost always higher than the H-2A program’s formula for the local “prevailing wage.” When the prevailing wage is a piece rate, the AEWR frequently is higher than workers’ piece-rate earnings; H-2A employers must pay at least the AEWR. Some of the H-2A AEWR’s for the years 2002 and 2006 are:

State	Year	
	2002	2006
Arizona .....	\$7.12	\$8.00
Georgia .....	\$7.28	\$8.37
Pennsylvania .....	\$7.46	\$8.95
California .....	\$8.02	\$9.00
North Carolina .....	\$7.53	\$8.51
Vermont .....	\$7.94	\$9.16
Colorado .....	\$7.62	\$8.37
Oregon .....	\$8.60	\$9.01
West Virginia .....	\$7.07	\$8.24

*The “Adverse Effect Wage Rate” or AEWR Is Too Low*

The current methodology for the adverse effect wage rate does not achieve the statutory purpose of avoiding adverse effects on U.S. workers’ wage rates. In 1987, during the Reagan Administration, the Department of Labor changed the H-2A AEWR methodology and thereby lowered the wages of affected U.S. and foreign workers by an average of 20%. The U.S. Court of Appeals, in a case brought by the AFL-CIO and farmworker advocates, ruled that the new methodology fell within DOL’s broad discretion. This “new” AEWR formula suffers from several flaws:

- The USDA Farm Labor Survey’s average-wage surveys include wage rates earned by guestworkers and unauthorized immigrants, whose wages tend to be lower than those of U.S. workers. Nationally, about one-half (53%) or more of the farm labor force is undocumented workers; these vulnerable workers accept lower wages than will documented workers. In crops where guestworkers are used, the jobs quickly become dominated by guestworkers (as in North Carolina tobacco, cucumbers and sweet potatoes), rather than U.S. workers. As guestworkers dependent on their employers to obtain a visa, the H-2A workers are in no position to demand wage increases. The AEWR should be based on surveys only of U.S. workers’ wage rates.

- The declining real value of the federal minimum wage has suppressed increases in the AEWR. Many farmworkers are paid the federal minimum wage (\$5.15), a state minimum wage (e.g., \$6.75 per hour in California), or a piece rate based on the minimum wage. For example, in Washington State, where the minimum wage was \$7.35 in 2005, the online America’s Job Bank listed a job opening for a hay farm equipment operator in Kittitas County for \$7.35 per hour. A farmer in Morven, Georgia was offering \$6.00 per hour for cabbage planting. In some cases, the employer sets a piece rate wage under which the average worker, working diligently, would make perhaps 20%-30% more than the minimum wage, with slower workers making less per hour (although faster workers often work fewer hours per day than hourly workers). If the minimum wage had kept pace with inflation, average wages and, therefore, the AEWR, would be higher.

- The AEWR is an inadequate labor market test because employers who claim difficulty finding workers should offer a competitive wage that is higher on the range of wage rates, rather than the average wage rate. Unemployment rates among U.S. farmworker have been high. For example, California’s state-wide unemployment rate in December 2004 was 5.7%, while the rates in the important agricultural counties of Kern, Merced, and Tulare were 9.7%, 10.6% and 11.9% respectively. A group of employers claiming a labor shortage and requesting guestworkers should be expected to improve its wage offer to attract workers to its job. In general, if the employer is already offering the local “prevailing wage,” it is likely that the prevailing wage is too low to entice U.S. workers to the job. The employers who offer higher than the average wage rate are much more likely to attract workers. Indeed, it is unfair to the agricultural employers who are paying higher than the average wage to allow employers to claim a “labor shortage” and gain access to guestworkers by offering only the uncompetitive, average wage.

- The AEWR’s issued annually are an outdated measure of wage competition because they are based on a survey of the prior year’s average wages. The H-2A growers are always one year behind any wage increases that might occur, which is especially problematic for attracting U.S. workers in a labor market that is allegedly tightening.

- AEWR’s do not automatically increase and at times decline. The AEWR formula does not contain a cost-of-living increase mechanism. Because they merely echo the

average regional wage level, the AEWR's may increase, stagnate or decrease. For example, Florida's AEWR declined from \$8.18 per hour in 2004 to \$8.07 in 2005.

- The Adverse Effect Wage Rate does not protect farmworkers against poverty. The AEWR reflects the survey findings of sub-poverty level wage rates paid to farmworkers and establishes for H-2A employers a below-poverty wage rate. Consider the extremely rare farmworker who managed to find 52 weeks of full-time farm work during the year, cobbling together one job after another to support a spouse and two young children. In 2004, a family would have earned \$18,158 at the Oregon-Washington AEWR of \$8.73 per hour, still less than the federal poverty guideline of \$18,392 that year for a family of four. Of course most farmworkers do not work 52 weeks per year. Partly due to employers' inefficiency, the seasonal nature of jobs, and a labor surplus, the average worker finds only about half that amount of work per year. More typically, both adults would work only intermittently and, at the AEWR level, their combined annual earnings would still not even reach the poverty level.

- The H-2A guestworker program suppresses wage improvements because, by law, it permits employers to reject any job applicant who demands a wage rate higher than the minimum H-2A wage rate. A worker who demands a higher wage rate can be rejected or fired as "unavailable" for the job and replaced by a guestworker. By shielding employers from workers' and labor unions' demands for higher wages and other market forces, a guestworker program's "minimum" standards often become the employer's maximum offer. The AEWR should compensate for this suppression of wage rates but does not.

- The AEWR's, by themselves, do not prevent employers from imposing very high productivity standards that desperate foreign workers will accept but that would cause U.S. workers to insist on higher wage rates.

To conclude, the minimum wage rates under the H-2A program are based on market rates and are not too high, but rather too low, reflecting that most farmworkers live in poverty. The adverse effect wage rate currently does not adequately protect against depression in "prevailing" wage rates caused by the presence of guestworkers. U.S. workers suffer harm and foreign workers are exploited.

Congress, in deliberating over guestworker programs, should recognize that requiring the "prevailing wage" is a minimum standard that is not sufficient to ensure decent treatment of both U.S. workers and guestworkers.

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[The prepared statement of Archbishop Gregory follows:]

**Prepared Statement of Archbishop Wilton D. Gregory, Archdiocese of Atlanta**

I am pleased that the U.S. House of Representatives has chosen to host field hearings on immigration in Gainesville and Dalton. Immigration impacts all of us and there are strong feelings involved. It is vital that the many voices be heard and that the public be educated about these complex issues. We must overcome the misunderstanding, ignorance, competition, and fear still standing in the way of policy solutions that are just and humane.

The current house bill containing primarily enforcement measures does not solve the problems facing our society. The Archdiocese of Atlanta, along with the U.S. Conference of Catholic Bishops (USCCB), supports a comprehensive approach to immigration reform which includes the following elements: 1) policies to address the economic root causes of migration; 2) reform of our legal immigration system, including a viable and workable path to citizenship; 3) a temporary worker program which protects the rights of all workers; 4) family-based immigration reform which reduces waiting times for family reunification; and 5) the restoration of due process protections for immigrants.

I and my brother bishops support these reforms because every day we witness the human consequences of an immigration system which is severely flawed. Families are separated; migrant workers are abused and exploited by human smugglers; and, tragically, human beings die in the desert. We must reform the system and restore to it respect for basic human rights and human life.

As our community continues to engage this important issue, I ask that the debate be conducted through civil dialogue, in the spirit of cooperation and love. It is my hope that participants on both sides of the issue will refrain from harsh rhetoric and address the substantive issues at hand.

I and the Catholic Archdiocese of Atlanta continue to reach out to the people who are most vulnerable through Catholic Charities and the ninety-five parishes and missions in North Georgia. We are working with members of the community and



with our elected officials toward a comprehensive and humane solution to the immigration crisis in our nation.



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